In The

Supreme Court Of The United States

OCTOBER TERM, 1983

83 - 2081

LEIF R. SIGMOND, *Petitioner*

vs.

UNITED STATES OF AMERICA

Appendix To
Petition Of Leif R. Sigmond For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 83-5442, 83-5461, 83-5462

UNITED STATES OF AMERICA

v.

MACK BARNES Appellant in No. 83-5442
HERBERT G. CASE, JR., Appellant in No. 83-5461
LEIF R. SIGMOND, Appellant in No. 83-5462

On Appeal from the United States District Court for the District of New Jersey
(Crim. Nos. 82-200-02, 01, & 03)
(Honorable Dickinson R. Debevoise)

Argued April 10, 1984
Before: ADAMS, BECKER and VAN DUSEN, Circuit Judges

JUDGMENT ORDER

After considering the contentions raised by appellants, namely, that (1) the suppressed state court materials used in the federal prosecution violated the Fourth Amendment; (2) the alleged criminal

conduct was not properly prosecuted under the mail fraud statute; (3) the court below erred in refusing to order the government to introduce chemical analysis of the materials alleged to have been illegally dumped; (4) the trial court erred in refusing discovery on point three; (5) they were prejudiced by the variance between the indictment and the proof introduced at trial; (6) the trial court's apparent reliance on race in the sentencing proceedings violated the equal protection clause; (7) it was error to admit a private diary into evidence; (8) the trial court erred in instructing the jury on a missing witness charge despite the lack of such a request for charge from the defendants; (9) the trial court erred in refusing to enforce all of the defendants' subpoenas; (10) the trial court erred in the supervision and instruction to the jury; and (11)

defendant Barnes was prejudiced by the inadvertent appending of material not in evidence to documentary evidence submitted by the prosecution and inspected by the jury, it is

ADJUDGED AND ORDERED that the judgment of the district Court be and is hereby affirmed.

BY THE COURT,

_____

Circuit Judge

ATTEST:

_____

Sally Mrvos, Clerk

DATED: April 16, 1984

APPENDIX B

United States of American Vs. LEIF R. SIGMOND

Filed:
May 25, 1983
at 11:00 a.m.
Allyn Z. Lite

United States District Court for the District of New Jersey
Docket No. Criminal 82-200

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date ---May 23, 1983

COUNSEL:

With Counsel - Dino Bliablias, Esq.

PLEA:

Not Guilty

FINDING & JUDGMENT:

There being a verdict of guilty. Defendant has been convicted as charged of the offense(s) of conspiracy (Count 1); use of mails in scheme to defraud (Counts 2, 3, 4, 7 through 12, 15, 16 & 17).

SENTENCE OR PROBATION ORDER:

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjuged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized

representative for imprisonment for a period of two (2) years and six (6) months on Count 1 and the defendant to pay a fine of $10,000.00; imposition of sentence suspended on each of counts 2, 3, 4, 7, 8, 9, 10, 11, 12, 15, 16 and 17 and the defendant placed on probation for a period of five (5) years on each count to run concurrently with each other, said probation to commence upon full and complete discharge from custodial sentence imposed on Count 1.

SPECIAL CONDITIONS OF PROBATION:

IT IS FURTHER ORDERED that execution of sentence be and is hereby stayed pending appeal.

ADDITIONAL CONDITIONS OF PROBATION:

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION:

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Signed by U.S. District Judge

_____/LS
DICKINSON R. DEBEVOISE

Dated: 5/25/83

United States of American Vs. HERBERT G. CASE, JR.

United States District Court for the District of New Jersey
Docket No. Criminal 82-200

Filed:
May 25, 1983
at 11:00 a.m.
Allyn Z. Lite

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date ---May 23, 1983

COUNSEL:

With Counsel - Justin Walder, Esq.

PLEA:

Not Guilty

FINDING & JUDGMENT:

There being a verdict of guilty. Defendant has been convicted as charged of the offense(s) of conspiracy (Count 1); use of mails in scheme to defraud (Counts 2, 3, 4, 7 through 12, 15, 16, 17, 19, 20 & 21).

SENTENCE OR PROBATION ORDER:

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjuged the defendant guilty as charged and convicted and ordered that: The defendant is hereby

committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eighteen (18) months on Count 1 and that the defendant do pay a fine of $2,000.00; imposition of sentence suspended on each of Counts 2,3,4,7,8,9,10,11,12,15,16,17,19,20 and 21 and defendant placed on probation on each count for a period of five (5) years to run concurrently with each other, said probation to commence upon full and complete discharge from custodial sentence imposed on Count 1.

SPECIAL CONDITIONS OF PROBATION:

IT IS FURTHER ORDERED that execution of sentence be and is hereby stayed pending appeal.

ADDITIONAL CONDITIONS OF PROBATION:

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, ~~any~~ may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION:

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Signed by U.S. District Judge

_____/LS
DICKINSON R. DEBEVOISE

Dated: 5/25/83

United States of American Vs. MACK BARNES

Filed:
May 25, 1983
at 11:00 a.m.
Allyn Z. Lite

United States District Court for the District of New Jersey
Docket No. Criminal 82-200

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date ---May 23, 1983

COUNSEL:

With Counsel - Anthony Mautone, Esq.

PLEA:

Not Guilty

FINDING & JUDGMENT:

There being a verdict of guilty. Defendant has been convicted as charged of the offense(s) of conspiracy (Count 1); use of mails in scheme to defraud (Counts 2, 3, 4, 7 through 12, 15, 16, 17, 20 & 21).

SENTENCE OR PROBATION ORDER:

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjuged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the

Attorney General or his authorized representative for imprisonment for a period of six (6) months on Count 1 and that the defendant do pay a fine of $500.00; imposition of sentence suspended on each of Counts 2,3,4,7,8,9,10,11,12,15,16,17,20 and 21 and the defendant placed on probation for a period of five (5) years on each count to run concurrently with each other, said probation to commence upon full and complete discharge from custodial sentence imposed on Count 1.

SPECIAL CONDITIONS OF PROBATION:

IT IS FURTHER ORDERED that execution of sentence be and is hereby stayed pending appeal.

ADDITIONAL CONDITIONS OF PROBATION:

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION:

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Signed by U.S. District Judge

_____/LS
DICKINSON R. DEBEVOISE

Dated: 5/25/83

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
v.	:	Criminal Action No. 82-200.
HERBERT G. CASE, JR., MACK BARNES, LEIF R. SIGMOND, and SCIENTIFIC CHEMICAL PROCESSING, INC.	:	OPINION
Defendants.	:	

DEBEVOISE, District Judge.

Appearances:

Charles S. Crandall, Esquire
Assistant United States Attorney
A. Patrick Nucciarone, Esquire
Assistant United States Attorney
Office of the United States Attorney
Fraud and Public Protection Division
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(Attorneys for the United States)

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Livingston, New Jersey 07039

(Attorneys for Defendant Barnes)

Dino D. Bliablias, Esqulre
Stein, Bliablias & McGuire, Esquires
11 Commerce Street
Newark, New Jersey 07102
(Attorneys for Defendant Sigmond)

At the conclusion of the November 1, 1982 hearing on defendants' various motions, I reserved two matters for subsequent disposition. First, defendants had moved to dismiss the indictment for the asserted reason that no proofs had been presented to the grand jury that there had been a use of the mails. I denied the motion but undertook to examine pertinent portions of the grand jury record and to reconsider my ruling if it appeared that the grand jury did not have evidence before it on the basis of which it could have concluded that there was probable cause to believe that the mails had been used in furtherance of the alleged fraudulent scheme. Second, I reserved decision on defendants' motions for a bill of particulars.

As to the evidence before the grand jury, I have examined it in sufficient detail to find that there was evidence to

enable the grand jury to conclude that there had been a requisite use of the mails in connection with the offense charged in each Count of the indictment. Thus, there is no reason to alter my earlier denial of defendants' motions to dismiss the indictment on this ground.

On October 15, 1982 defendants moved for a bill of particulars as to six matters. On October 19, 1982 defendant Case moved for particulars as to sixty-two (62) numbered matters, many of the numbered matters containing from seven to eighteen lettered sub-items.

The purpose of a bill of particulars is to enable a defendant to prepare his defense, to avoid surprise at the trial, and to protect a defendant against a second prosecution. United States v. Addonizio, 451 F.2d 49 (3d Cir. 1972), cert. denied, 405 U.S. 936 (1972). In

part to obtain the same ends, the Court in this District routinely enters a discovery order the Court at the time of arraignment. That was done in this case and as a result each defendant became entitled to copies of his statements within the possession of the Government, reports of physical or mental examinations and of scientific tests or experiments made in connection with the case in the Government's possession, the defendant's grand jury testimony, defendant's documents or other property in the Government's possession, defendant's prior criminal record and Brady material. In addition, the Government was required to pre-mark all exhibits it intends to introduce as part of its direct case and to permit defendants' attorneys to inspect and copy these exhibits thirty (30) days prior to trial. I am informed that the Government has complied with the requirements of the discovery order.

This case must, of necessity, depend in large measure upon documentary evidence showing shipments, billings, payments, reports to governmental agencies. These documents should show what hazardous wastes defendants claimed to have picked up and disposed of and the dates and places of asserted disposal. They came from Scientific Chemical Processing Company, Inc. ("SCP") and have been made available to defendants for examination and copying. Further, the Government has made available to defendants for inspection and copying the records of the chemical waste generators relevant to this case. These records disclose information about the wastes actually shipped. From these documents and from the Government's exhibits which have also been made available to defendants, much of the information they seek in their bill of particulars is available to them.

Turning to the motion for a bill of particulars filed on October 15, 1982, paragraphs 1 and 4 of Schedule A to that motion ask as to each incident of unlawful dumping referred to in paragraphs 15 and 17, respectively, of Count One of the indictment, for "the exact citation of each and every federal or state statute, regulation or other authority [by] [under] which the dumping was alleged to have been made unlawful". The Government asserts that through discovery it has already provided defendants with copies of the rules of the Passaic Valley Sewerage Commissioners ("Passaic Valley") which are alleged to have been violated. The Government does not claim to have furnished copies of statutes and regulations governing disposition of hazardous wastes other than through the facilities of Passaic Valley.

I think it is appropriate that the Government advise the defendants of the specific statutes and regulations which it claims were violated. This information need not be tied to particular paragraphs or Counts of the indictment, but the Government should list each such statute and regulation. An order will be entered requiring the Government to furnish particulars in this regard.

Paragraphs 2, 3, 5 and 6 of Schedule A of defendants' motion seek details as to the chemical composition of each substance alleged to have been dumped and the volume and chemical concentration of the substances which were dumped. This information need not be furnished by way of particulars. An examination of the records referred to above will provide defendants with all that they need to prepare their defense in this regard.

Defendant Case's motion for particulars filed October 19, 1982 constitutes a twenty-four page demand for everything that ingenious counsel could conjure up, without regard to whether the information sought has already been furnished, or whether it is the subject of the earlier discovery order, or whether it exists at all, or whether it is a proper subject for particulars.

I have examined with care each demand. Except to the extent that the information requested is the subject of the discovery order, the motion will be denied in its entirety for the following reasons:

1. The information sought is already the subject of a discovery order and, to the extent it exists, has been furnished to Case, e.g., Requests Nos. 1, 2, 3, 6, 7, 12 (to the extent the records were the property of SCP), 15.

2. The information sought is beyond that which is authorized by statute or by the Federal Rules of Criminal Procedure, e.g., Request Nos. 4, 5, 8, 9, 10, 11 (Rule 16(a)(1)(A)), 36 (Rule 16(a)(1)(B)).

3. The Government having informed defendants that no electronic surveillance or wiretaps were used in its investigation, and defendant Case having made no showing that his own rights were violated, the Government is not required to describe the method by which it obtained its evidence or conducted its investigation, Request Nos. 18, 38, 41, 42, 43, 49.

4. The Government is not required to specify in advance what evidence it intends to offer at trial or what witnesses it proposes to call, e.g., Requests Nos. 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 33, 37.

5. Defendant Case having made no showing of a compelling or particularized need, he is not entitled to information concerning grand jury proceedings which are normally protected by the rule of secrecy, e.g., Requests Nos. 44, 46, 48.

6. As in the case of most of the particulars sought in the October 15, 1982 motion, specification of minute details concerning illegal dumping and other acts charged in the indictment are not necessary for a proper defense of the case, as substantial information has been made available to defendants through the records to which they have access, and even were the records not available, the details sought are not normally discoverable through a demand for particulars, e.g., Requests Nos. 45, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62.

In summary, (i) there is no reason to modify my determination that defendants'

motion to dismiss the indictment should be denied; (ii) the Government will be required to specify each statute and regulation which it alleges defendants violated, and otherwise defendants' motion for a bill of particulars, filed October 15, 1982, will be denied; and (iii) defendant Case's motion for a bill of particulars, filed October 19, 1982, will be denied in its entirety, but such denial shall not affect the Government's continuing obligation to comply with the discovery order filed July 8, 1982.

The Government is requested to prepare a form of order implementing my November 1, 1982 rulings and the rulings set forth in this opinion.

Dated: November 16, 1982

Dickinson R. Debevois
United States District
Judge

APPENDIX D

1. UNITED STATES CONSTITUTIONAL PROVISIONS

Section 6, Clause 1. Compensation of members; privilege from arrest

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason,Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech of Debate in either House, they shall not be questioned in any other Place.

AMENDMENT IV-SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable

cause, supported by Oath or affirmation, and particulary describing the place to be searched, and the persons or things to be seized.

AMENDMENT V-CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. UNITED STATES STATUTES

18 U.S.C Section 317.
Conspiracy to commit offense or to defraud United States

If two or more prsons conspire either to commit any offense against the United States, or to defraud the United Staes, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

18 U.S.C. Section 1341.
Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to

defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distrbute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or

thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. June 25, 1984, c. 645, 62 Stat. 763; May 24, 1949, c. 139, Sect. 34, 63 Stat. 94.

3. FEDERAL RULES OF CRIMINAL PROCEDURE
Rule 7(f) Bill of Particulars.

The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires. As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.

Rule 12. Pleadings and Motions before Trial; Defenses and Objections

(a) Pleadings and Motions.

Pleadings in criminal proceedings shall be the indictment and the information, and the pleas of not guilty, guilty and nolo

contendere. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or

to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for a severance of charges or defendants under Rule 14.

(c) Motion Date. Unless otherwise provided by local rule, the court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(d) Notice by the Government of the Intention to Use Evidence.

(1) At the Discretion of the Government. At the arraignment or as soon thereafter as is practicable, the government may give notice to the defendant of its intention to use

specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3) of this rule.

(2) At the Request of the Defendant. At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(e) Ruling on Motion. A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for

determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(f) Effect of Failure to Raise Defenses or Objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (c), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from waiver.

(g) Records. A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(h) Effect of Determination. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be continued in custody or that his bail be continued for a specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect the provisions of any Act of Congress relating to periods of limitations.

As amended Apr. 22, 1974, eff. Dec. 1 1975; July 31, 1975, Pub. L. 94-64 Sect. 3(11), (12), 89 Stat. 372.

(i) Production of Statements at Suppression Hearing. Except as herein provided, rule 26.2 shall apply at a hearing on a motion to suppress evidence under subdivision (b)(3) of this rule. For purposes of this subdivsion, a law enforcement officer shall be deemed a witness called by the government, and upon

a claim of privilege the court shall excise the portions of the statement containing privileged matter.

Rule 35. Correction or Reduction of Sentence

(a) Correction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in all illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence. The court may reduce a sentence within 120 days after the sentence imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation.

Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision. (As amended Apr. 30, 1979, eff. Aug. 1 1979; Apr. 28, 1983, eff. Aug. 1, 1983).

Rule 41. Search and Seizure

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a federal magistrate or a judge of a state court of record within the district wherein the property or person sought is located, upon request of a federal law enforcement officer or an attorney for the government.

(b) Property or Persons Which May be Seized with a Warrant. A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally

possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents.

(1) Warrant Upon Affidavit. A warrant other than a warrant upon oral testimony under paragraph (2) of this subdivision shall issue only on an affidavit or affidavits sworn to before the federal magistrate or state judge and establishing the grounds for issuing the warrant. If the federal magistrate or state judge is satisfied that grounds for the application exists or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property or person to be seized and naming or describing the person or

place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the federal magistrate or state judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall command the officer to search, within a specified period of time not

to exceed 10 days, the person or place named for the property or person specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate povision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate a federal magistrate to whom it shall be returned.

(2) Warrant upon oral testimony--

(A) General Rule- If the circumstances make it reasonable to dispense with a written affidavit, a Federal Magistrate may issue a warrant based upon sworn oral testimony communicated by telephone or other appropriate means.

(B) Application - The person who is requesting the warrant shall prepare a document to be known as a

duplicate original warrant and shall read such duplicate original warrant, verbatim, to the Federal magistrate. The Federal magistrate shall enter, verbatim, what is so read to such magistrate on a document to be known as the original warrant. The Federal magistrate may direct that the warrant be modified.

(C) Issuance. If the Federal magistrate is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the Federal magistrate shall order the issuance of a warrant by directing the person requesting the warrant to sign the Federal magistrate's name on the duplicate original warrant. The

Federal magistrate shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(D) Recording and certification of testimony. When a caller informs the Federal magistrate that the purpose of the call is to request a warrant, the Federal magistrate shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for that warrant. If a voice recording device is available, the Federal magistrate shall record by means of such device

all of the call after the caller informs the Federal magistrate that the purpose of the call is to request a warrant. Otherwise a stenographic or longhand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the Federal magistrate shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the Federal magistrate shall file a signed copy with the court.

(E) Contents. The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(F) Additional rule for execution. The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(G) Motion to suppress precluded. Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

(d) Execution and Return with Inventory. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken.

The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The Federal magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the district court for

the district in which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) Motion to Suppress. A motion to suppress evidence may be made in the court of the district of trial as provided in Rule 12.

(g) Return of Papers to Clerk. The federal magistrate before whom the warrant is returned shall attach to the warrant a

copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the district in which the property was seized.

(h) Scope and Definition. This rule does not modify any act, inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 6:00 a.m. to 10:00 p.m. according to local time. The phrase "federal law enforcement officer" is used in this rule to mean any government agent, other than an attorney for the government as defined in Rule 54(c), who is engaged in the enforcement of the criminal laws and is within any

category of officers authorized by the Attorney General to request the issuance of a search warrant.

(As amended Apr. 25, 1976, eff. Aug 1, 1976; July 30, 1977, Pub.L. 95-78, Sect. 2(d), 91 Stat. 320; Apr. 30, 1979; eff. Aug. 1, 1979).

Rule 52. Harmless Error and Plain Error

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

4. FEDERAL RULES OF EVIDENCE

Rule 606. Competency of Jurors as Witness

(a) At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is

called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental process in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded

from testifying be received for these purposes.

(As amended Pub.L. 94-149, Sect 1(10), Dec.12, 1975, 89 State 805).

Rule 803(1)

Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

APPENDIX E

APN:sg

UNITED STATES
DISTRICT COURT
DISTRICT OF
NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Dickinson R. Debevoise
v.	:	Criminal No.
HERBERT G. CASE, JR. ET AL.	:	82-200
	:	ORDER

The defendants Herbert G. Case, Jr., by his attorneys, Walder, Sondak, Berkeley & Brogan, Esqs, Mack Barnes, by his attorneys, Minichino, Mautone and Colasanti, Esqs., and Lief Sigmond, by his attorneys, Stein, Bliablias, McGuire & Pantages, Esqs. having brought this matter before the Court by way of pretrial motions for a bill of particulars and for dismissal, suppression of evidence and severance, the defendant Scientific Chemical Processing, Inc. having neither entered an appearance nor filed any motions, the Court having considered the

briefs and supporting documents and the argument of counsel as well as documents produced during oral argument, and for good cause;

IT IS on this 29th day of November 1982,

ORDERED that for the reasons stated from the bench on Monday, November 1, 1982 and set forth in the Court's opinion of November 16, 1982:

1. Defendants' joint motion for dismissal of the indictment be and hereby is denied;

2. Defendants' joint motion for the suppression of evidence be and hereby is denied;

3. Defendants' joint motion to dismiss Counts 4 through 7 and 9 through 14 be and hereby is denied;

4. Defendants' joint motion to force the government to elect among Counts 2 through 21 be and hereby is denied;

5. Defendants' joint motion to sever Counts 2 through 21 of the indictment be and hereby is denied;

6. Defendant Case's motion for a severance be and hereby is denied;

7. The United States delete the surplus language "the citizens of the State of New Jersey" from the indictment; and

8. Defendants' joint motion for an order requiring the government to furnish a bill of barticulars be and hereby is denied <u>except as to the following</u>: The government shall furnish a bill of particulars which further defines the allegations of unlawful dumping in the indictment by specifying the statutes and regulations which it claims defendants violated.

9. Defendant Case's motion an order requiring the government to furnish a bill of particulars be and hereby is denied.

Dickinson R. Debevoise,

Judge

United States District

Court

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

		Criminal No.82 200
UNITED STATES OF AMERICA	:	Transcipt of Proceedings
v.	:	SENTENCE
HERBERT G. CASE, JR., MACK BARNES, LEIF R. SIGMOND and SCIENTIFIC CHEMICAL PROCESSING COMPANY, INC.,	:	Newark, NJ May 23, 1983
Defendants.	:	

BEFORE:

HON. DICKINSON R. DEBEVOISE, U.S.D.J.

Appearances:

W. HUNT DUMONT, UNITED STATES ATTORNEY
BY: A PATRICK NUCCIARONE, Assistant U.S. Attorney
CHARLES S. CRANDALL, Assistant U.S. Attorney
For the Government

JUSTIN P. WALDER, ESQ.
For Defendant Case

ANTHONY R. MAUTONE, ESQ.
For Defendant Barnes

DINO D. BLIABLIAS, ESQ.
For Defendant Sigmond

* * *

1 in this industry in this state that they are facing the
2 possibility of incarceration, and the days when having to deal
3 with the DEP or the EPA for not abiding by the regulations of
4 those agencies were merely a cost of doing business are over
5 and they are over for all times.
6 That's all I have to say.
7 THE COURT: Thank you, Mr. Nucciarone.
8 It now becomes necessary to impose sentence in
9 this case. Before I turn to the individual defendants, I
10 think it can be stated we are confronted with the tragic and
11 unfortunate situation of having three individual defendants,

12 who in their personal lives, family lives, communty lives,
13 have led an exemplary existence, beyond criticism, and, in
14 fact, much to be praised, much to merit emulation.
15 On the other hand, the jury has found that these
16 three individuals and the corporation with which they were
17 affiliated committed extremely serious offenses against the
18 environment.
19 These are offenses which were perpetrated over a period,
20 lengthy period of time. They are offenses which have
21 unknown effects in the future, causing community harm which is
22 beyond calculation.

23 The sentencing in this case, therefore, involves
24 weighing the undoubted virtues of the defendants as
25 individuals in other spheres of activities and the necessity

1 that the kinds of conduct that led to this trial and to the
2 necessity to engage in a sentencing hearing not be encouraged,
3 and that the community have an unmistakable message that this
4 kind of behavior will have serious consequences.
5 Reference has been made to others involved in
6 this offense, namely, Mr. Perno, Mr. Borden, Mr. Heflich.
7 These sentences really are not comparable. The sentences
8 there, in the case of Mr. Perno and Mr. Borden, took into
9 account the fact that they recognized the offenses and very
10 early began to do what they could to undo it.

11 That has not been the case here. We have gone
12 through trial, as the defendants had every right to do, but
13 nevertheless, I cannot weigh and balance the cooperation which
14 I could weigh in the case of the others who were mentioned.
15 That is an important consideration to me always. I can only
16 weigh here what the consequences will be with respect to the
17 community perception of these offenses and the consequences to
18 the individuals.
19 What I have done in each case -- and I've
20 evaluated each separately -- is to give the minimum prison
21 sentence -- and there will be prison sentences in each case.--

22 to give the minimum prison sentence which I could give

23 consistent with the public notice and interpretation of the

24 sentences. To follow the course of alternative sentences,

25 cleaning up the premises or engaging in an environmental

1 project would not have effect.

2 Though I know these defendants need no

3 rehabilitation in the sense of impressing on them the

4 seriousness of the offense, the community does need to have

5 unmistakable message, and that it is what the sentences are

6 intended to do.

7 No defendant need stand up as I deal with him.

8 I'll just run through these one at a time.

9 I refer first to Mr. Leif R. Sigmond. I received

10 numerous moving letters from his family, friends, business

11 associates, from teachers, others who have known him attesting

12 to his character, his qualities, his strong family ties, good
13 friendship. However, in the case of Mr. Sigmond I must accept
14 the fact that the evidence showed that he was the primary
15 person in charge of running this corporation. It was his
16 corporation. Though he may have been absent from the business
17 from time to time, or even fairly extended periods of time, he
18 nevertheless was totally in command and in control in the
19 method in which it was conducted and in the activities which
20 were the occasion for the indictment which led to the
21 conviction here.
22 I should add with respect to the jury verdict, it

23 was the verdict. I have found on previous occasions

24 there was ample evidence to support that verdict.

25 Taking into account the various factors, the

1 sentence in the case of Mr. Sigmond to be: It is adjudged the
2 defendant is hereby committed to the custody of the Attorney
3 General, or his authorized representative for imprisonment for
4 a term of two years and six months and fined the sum of
5 $10,000 on Count 1 of the indictment. Imposition of sentence
6 on Counts 2 through 4, 7 through 12, 15 through 17 of the
7 indictment is hereby suspended and the defendant is placed on
8 probation for a period of five years to commence upon the full
9 and complete discharge of the custody sentence imposed on
10 Count 1.
11 Turning to Mr. Case, again, I have this letter.

12 It is a very thoughtful, extended presentation of his
13 position, his views, his background. I have had numerous
14 letters, eloquent letters from members of his family, letters
15 from friends, other associates and teachers and I took these
16 letters, as I did all the letters, very much into account.
17 I hope in all cases, Mr. Case and the others,
18 that after the term of incarceration they will be able to
19 return and pick up these very positive areas of their lives
20 with this behind them.
21 These letters attest to the fine character and
22 qualities, strong family persons, traditions of community

23 service, again, which I have to weigh against the terrible

24 effects of what was done in this case.

25 In the case of Mr. Case, I find that he was not

1 as responsible in the corporate actions as Mr. Sigmond. he
2 had a lesser role, albeit the major role, and one which had
3 considerable elements of responsibility, even though he was
4 more involved with sales than in the day-to-day operation of
5 disposing of the materials which were brough to the company's
6 two premises. He certainly knew what was happening and was
7 operating with that knowledge.
8 Therefore, the sentence will be, with respect to
9 Mr. Case: It is adjudged the defendant is hereby committed to
10 the custody of the Attorney General or his authorized
11 representative for imprisonment for a term of 18 months, and

12 fined the sum of $2,000 on Count 1 of the indictment.

13 Imposition of sentence on Counts 2 through 4, 7

14 through 12, 15 through 17, 20 and 21 of the indictment is

15 hereby suspended and the defendant is placed on probation for

16 a period of five years, to commence on the full and complete

17 discharge from the custody sentence imposed on Count 1.

18 Turning to Mr. Mack Barnes. Mr. Barnes I find is

19 in a somewhat different position than the other defendants,

20 both as to background and as to role in the company here.

21 He is a black man born in the south before the

22 time when civil rights activities had
changed the face of the
23 south. He was educated. He had
honorable service in the
24 United States Army. Like the other
defendants, he is
25 honorably supporting a family.

1 I've had letters with respect to him, not as
2 many, but I think sometimes the quality of a letter and not
3 the number is significant, and he, like the others, is capable
4 of and has engaged in productive work other than the work
5 involved in this particular case.
6 I don't find that Mr. Barnes' role in the company
7 was as controlling as that of Mr. Case and Mr. Sigmond. He
8 was perfectly aware of what was going on, and, in fact, was
9 instrumental in conducting it, but nevertheless it was of a
10 much lower level responsibility. His attorney characterized
11 him as simply a paid worker. I think he was more than that.

12 He was running the trucking operation to a very major extent,

13 but nevertheless he was not at the executive level of the

14 others and I think this must be taken into account.

15 He had fewer of the advantages in life than the

16 other two defendants. I think this must be taken into account

17 in the sentencing process.

18 The sentence in the case of Mr. Barnes will be:

19 It is adjudged the defendant is hereby committed to the

20 custody of the Attorney General or his authorized

21 representative for imprisonment for a term of six months, and

22 fined the sum of $500 on Count 1 of the indictment.

23 Imposition of sentence on Counts 2 through 4, 8

24 through 12, 15 through 17, 20 and 21 of the indictment is

25 hereby suspended. The defendant is placed on probation for a

1 period of five years, to commence upon full and complete
2 discharge from the custody sentence imposed on Count 1.
3 As to the corporation, I think there is no need
4 for any discussion. The corporation has not appeared at any
5 time during these proceedings. It can only be sentenced on a
6 monetary basis which may be somewhat illusory, since its
7 existence is in doubt. But its sentence will be: It is
8 adjudged that the defendant corporation pay a fine to the
9 United States in the sum or $10,000 on Count 1 of the
10 indictment. The defendant corporation pay a fine to the

11 United States in the sum of $500 on each of Counts 2, 3, 4, 7,
12 8, 9, 10, 11 and 12, and that the defendant corporation pay a
13 fine to the United States in the sum of $500 on each of Counts
14 15, 16, 17, 19, 20 and 21. Therefore, it is the intent of the
15 Court that the sentence be a total fine in the amount of
16 $17,500.
17 I would advise each of the individual defendants
18 that he has a right to appeal. The appeal must be filed
19 within ten days of the entry of this judgment. If any
20 defendant at this point is unable to afford the services of an
21 attorney, an attorney will be appointed for him in the Court

22 of Appeals, and the Clerk of Court will, upon request, file a

23 notice of appeal on behalf of that defendant.

24 In conclusion. I would simply state that I hope

25 that both aspects of these sentence will be realized, that

1 the community will recognize the seriousness of this kind of
2 activity, and ultimately, that these defendants will be able
3 to undergo punishment which has been meted out without
4 destroying themselves, their families. They are strong
5 individuals, all three of them. Their families are strong
6 families. I think more than is the case in most sentences
7 which I've had to impose, I think the personal strengths and
8 the family strength and the friendship strength is there to
9 accept this and move on to a life with this behind them and a
10 new and constructive era for each.
11 MR. WALDER: Judge, I think inadvertently your

12 imposition of Mr. Case's sentence, you skipped Count 19, which

13 I would assume you were going to suspend as you did the

14 predecessor counts other than Count 1.

15 THE COURT: Yes, 19 should have been mention.

16 That is included. Did I miss any others?

17 MR. WALDER: That's the only one that I notice.

18 THE COURT: Any other applciations?

19 MR. BLIABLIAS: Yes, your Honor. I would like to

20 make application for bail pending appeal.

21 My understanding that there is presently bail in

22 the form of a personal recognizance which can be, I'm advised,

23 continued for purposes of appeal.
Therefore, I would like to
24 apply to have present bail on behalf of
Mr. Sigmond be
25 continued pending his opportunity to
perfect his appeal.

1 MR. WALDER: I would like to make the same
2 application for Mr. Case.
3 MR. MAUTONE: I would join in that application.
4 I understand that you have ten days under the federal system
5 to file the notice of appeal.
6 THE COURT: Yes. Any objection?
7 MR. NUCCIARONE: There is no objection, your
8 Honor.
9 THE COURT: Bail will be continued pending
10 appeal. I have not made any arrangements for personal
11 surrender at this time. If an appeal is not taken, let me
12 know and arrangements will be made. Thank you very much.

13 MR. NUCCIARONE: Your Honor, just for
14 clarification, with respet to each of the substantive counts
15 the five-year probationary term was imposed as to each and
16 every one, but concurrent with each and every other one?
17 THE COURT: Yes, one five-year probation term.
18 MR. NUCCIARONE: Thank you.
19 THE COURT: Yes, all right. Thank you.
20

— — —

APPENDIX G

JAMES ZAZZALI
Attorney General of New Jersey

By: John S. Furlong
Deputy Attorney General
Division of Criminal Justice
13 Roszel Road
Princeton, New Jersey 08540
(609) 452-9500, Extension 322

SUPERIOR COURT
OF NEW JERSEY
COUNTY OF ESSEX
LAW DIVISION -
CRIMINAL
INDICTMENT NO.
SGJ 51-78-2

STATE OF NEW JERSEY,)

Plaintiff,)

v.) ORDER

SCIENTIFlC CHEMICAL)
PROCLSSING, INC.,)

Defendant.)

This matter having been opened to the court on May 2, 1980, Ralph DeRose, Esq. and Donald Rinaldi, Esq. appearing on behalf of Defendant Scientific Chemical Processing, Inc., Steven Greenstein, Esq., appearing on behalf of Defendant Case, Dino Bliablias, Esq., appearing on behalf of Defendant Sigmond, Michael Pedicini,

Esq., appearing on behalf of Defendant Barnes, Michael Rodburg, Esq. of counsel to defendants, and Deputy Attorneys General Gregory Sakowicz, Charles Buckley, and James O'Halloran appearing on behalf of the State of New Jersey, the Court having heard the arguments of counsel and having previously denied this motion to suppress evidence on May 2, 1980, and the Court now acting sua sponte, having reconsidered the arguments of counsel;

It Is ORDERED on this 3rd day of April, 1981, that the order of the Court entered May 2, 1980 be and hereby is vacated, and that the motion to suppress evidence be and hereby is granted.

WILLIAM H. WALLS, J.S.C.

APPENDIX H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v. No. 82-200

Herbert G. Case, et al

To Chief Counsel/Staff Director,
Custodian of Records or any other
person authorized to identify
documents to be produced.
United States House of
Representatives, 2125 Rayburn, House
Office Building, Washington, D.C.
20215

You are hereby commanded to appear in the United States District Court for the District of New Jersey at the U.S. Courthouse & Post Office Building in the city of Newark, NJ on the 17th day of January, 1983 at 10:00 o'clock a.m. and bring with you (See attached)

This subpoena is issued upon application of the defendant Herbert G. Case.

Jan. 11, 1983

By: _____ l/s

Deputy Clerk

_____ l/s

Barry A. Kozyra

Attorney for Defendant

17 Academy Street

Newark, NJ

RETURN

Received this subpoena at 1300, 19th St. N.W. on Jan. 17, 1983 and on Jan. 17, 1983 at 3:48 p.m. served it on the within named Sharon E. Davis by delivering a copy to her and tendering to her the fee for one day's attendance and the mileage allowed

APPENDIX I

HAZARDOUS WASTE MATTERS:
A CASE STUDY OF
LANDFILL SITES

HEARING
BEFORE THE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
FIRST SESSION
JUNE 9, 1981
SERIAL NO. 97-43
PRINTED FOR THE USE OF THE
COMMITTEE ON ENERGY AND COMMERCE

TESTIMONY OF GREGORY SAKOWICZ

MR. SAKOWICZ. I have been asked to appear today to testify before this subcommittee regarding the regulatory enforcement role of the Division of Criminal Justice with respect to the Lone Pine landfill in New Jersey. In that regard, I wish to advise that the Division of Criminal Justice does not have any regulatory function in respect to the Lone Pine landfill, or any other landfill. However, I am prepared to discuss the Division of Criminal Justice's enforcement role with respect to the Lone Pine landfill.

On July 13, 1978, following a covert investigation into the the disposal practices of a Scientific Chemical Processing, Inc., a waste treatment facility, criminal search warrants were executed upon the premises.

During the course of the investigation of this waste treatment facility, representatives from the Division of Criminal Justice learned that a certain individual had removed approximately 50,000 drums from the SCP site at the rate of $5 per drum.

The individual who made this allegation did not know the location to which the drums of chemical waste had been taken. It was his opinion that the drums were being taken to a landfill in the southern part of New Jersey and that the drums were in fact being buried. It was also revealed at this time that the driver of a trucking company would, on occasion, place a telephone call from the waste treatment facility to the landfill which was to accept this material. It was further revealed that the telephone calls would be made for the purpose of either (1) determining whether or not any

inspectors were at the landfill at that time and/or (2) requesting that the landfill stay open until the truckload of drums would arrive.

With this information now available, subpenas were issued for the telephone toll records of the subject company. Under receipt of these records, it was learned that several calls had been placed to the Lone Pine Landfill in Freehold, N.J. Following this, state investigators from the division of criminal justice conducted a reconnaissance of the Lone Pine Landfill, on November 3, 1978.

Additionally, another State investigator conducted an aerial reconnaissance on November 8, 1978. These reconnaissances were made for the purpose of establishing ground level surveillance points. Both the observations of the land based investigators and that investigator conducting the aerial surveillance

indicated that a potential existed that the Lone Pine Landfill had been, or was being used for the disposal of some type of liquid material.

Following several days of ground level surveillance at the site, it was determined that a specific carter had been observed transporting tankers to the Lone Pine Landfill. Mobile surveillances of these vehicles established that the material being transported originated from two locations. A manufacturing plant in the local area of the landfill and from a municipal sewage treatment plant in New Jersey.

With this information now available, I contacted the New Jersey Department of Environmental Protection in order that more specific information could be secured concerning the Lone Pine Landfill. On November 21, 1978, I was advised that the Lone Pine Landfill had been the site of a

fire during May or June 1978 and that the fire did include, in part, materials of a chemical nature and that the department of environmental protection had imposed a fine with regard to this fire.

Following this telephone conversation, representatives from the division of criminal justice spoke to the department of environmental protection to determine what materials could legally be accepted by the Lone Pine Landfill and to determine what materials were being transported from the two aforementioned generators: the sewage treatment facility and the local manufacturing plant. We were told that the Lone Pine Landfill could legally accept these materials.

On November 29, 1978, I submitted a memorandum to my supervisors requesting that some arrangements be made for the review of the department of environmental protection files concerning the Lone Pine

Landfill. On December 19, 1978, I contacted Director Tylutki of the New Jersey Department of environmental protection's Solid Waste Administration regarding arrangements to review the department of environmental protection files on Lone Pine.

Director Tylutki told me that the landfill experienced a "significant chemical fire" in June and that, at that time, the landfill was illegally accepting chemical waste. According to Director Tylutki, the owner of the landfill placed all the blame and responsibility on the landfill's manager who allegedly fled to Florida. I was told by Director Tylutki that there are pending administrative orders against Lone Pine for purposes of cleaning up its area and that the solid waste administration was considering the closure of this landfill.

Later that date, a state investigator met with the department of environmental protection representatives and was allowed access to the department of environmental protection file and received photocopies of pertinent materials.

On January 8, 1979, after a review of the pertinent materials by the investigator, I discussed these materials with him in order to plan a course of action. Upon review and discussion it was determined that in addition to establishing the fact that a fire had occurred on the landfill on June 23, 1978, there was information in the file providing a summary of what had transpired at that landfill from June 21, 1978 until November 2, 1978. The files contained a handwritten memo from a department of environmental protection inspector, dated June 23, 1978. This handwritten report indicated that approximately 47 drums of

material had been located, that the vegetation in certain areas was dead and that observations were made concerning a "recently covered chemical pool".

On June 23, 1978, the Federal Environmental Protection Agency responded to the side of the fire and took water samples for analysis. On June 25, a department of environmental protection inspector responded to the Lone Pine landfill and had a conversation with a bulldozer operator who claimed to have knowledge concerning drums being brought into the Lone Pine landfill. This environmental protection inspector's memorandum indicates that the bulldozer operator identified the first name of an individual and a specific geographical area from which this person came and named two other carters as being involved in the transporting of chemicals to Lone Pine.

The documentation also indicated that the department of environmental protection inspection personnel conducted nocturnal surveillances at the Lone Pine site on June 27 and 28, 1978, and July 1, 1978. These surveillances did not reveal any additional evidence of illegal dumping activities.

After a review of the department of environmental protection files, representatives of the division of criminal justice met with inspectors from the department of environmental protection solid waste administration to discuss the information contained in those reports. It was of particular interest to all concerned to identify the carters who were mentioned by the bulldozer operator.

Based upon these discussion with the department of environmental protection, a suspect individual was identified. Additionally, it was believed that two of

the three carters were identified. Following this, state investigators established surveillances of two entities at two separate locations. It was determined that surveillances would be established because even though chemical waste was no longer going to Lone Pine landfill, it was possible that these entities might be transporting chemical waste to other locations which, if they were taking this chemical waste knowingly and illegally, would become targets of an investigation. It was also thought that if we were able to apprehend these carters actually dumping chemical waste at another location, then it would be possible to exert pressure in order to determine what had actually occurred with these carters at the Lone Pine Landfill.

It should be noted that a review of the records of the waste treatment facility mentioned at the outset of my

statement indicated that one of the suspect carters had transported chemical waste from the waste treatment facility only until May 1, 1978 which was the date that New Jersey instituted its special waste manifest system.

Surveillances were established on the two carters which had been identified. These surveillances occurred over the course of several days. However, little information of evidential value was learned.

With regard to the efforts expended to locate the aforementioned bulldozer operator employed during June 1978 at Lone Pine landfill, it is my recollection the inspector from the department of environmental protection, who had the initial conversation with the operator in June 1978 did have followup conversations with the operator in June 1978. At a date uncertain during the course of the

investigation, the inspector advised me that he had in fact spoken to and identified the bulldozer operator. It was represented to me by this inspector that the bulldozer operator did not have specific information regarding chemicals being brought to Lone Pine.

Because there was no indication in early 1979 that the landfill was currently accepting chemical waste, efforts of the investigators assigned to toxic waste matters were directed to other investigations. However, the Lone Pine file was kept open for further development as time allowed.

Specifically efforts were directed toward surveillances of the Iron Oxide Corp. in Elizabeth, N.J. Following 4 weeks of intensive surveillance activities, criminal search warrants were executed at Iron Oxide on April 10, 1979. Additionally, arrests by

investigators of the toxic waste unit were made at Price's landfill in Atlantic County, N.J., when employees on the Lightman Drum Co. illegally offloaded drums of chemical waste on November 15, 1978. I should add it was also into a landfill which is experiencing pollution problems. These investigations resulted in criminal indictments against 4 corporations and 10 individuals. The corporations were Chemline, Iron Oxide Corp., Perk Chemical and Lightman Drum Co., Inc. It should be noted that until July 1, 1979, the total complement of the toxic waste investigation unit of the division of criminal justice was comprised of one attorney, one auditor and two field investigators.

On August 14, 1979, Lester Jargowski, Monmouth County health officer, contacted the division of criminal justice to apprise it of the fact that the

unidentified entity had disposed chemical waste on State property in the Turkey Swamp game preserve near Freehold, N.J. Turkey Swamp is located immediately across the road from the Lone Pine landfill. The access roads to both Turkey Swamp and Lone Pine landfill are identical. Based upon this new allegation of dumping at both Lone Pine and Turkey Swamp, nocturnal surveillances were established at Turkey Swamp during the month of August 1979.

After several surveillances, Mr. Jargowski advised us that the possible illegal chemical disposal had drawn quite a bit of attention in the local areas in terms of both media and governmental agencies. It is possible that due to this notoriety, our surveillance was not productive. The criminal investigative file of Turkey Swamp was closed by the division of criminal justice. It was reopened when Lester Jargowski advised us

that it was possible to install remote sensing devices at the Turkey Swamp area.

MR. GEORGE: Mr. Sakowicz, if you would hold up for a few minutes, we are going to have to adjourn for a vote on the floor. It won't take more than 10 minutes, and we will reconvene at that time.

(Brief recess).

MR. GEORGE: The subcommittee will come to order.

I would like to invite you to proceed, Mr. Sakowicz.

MR. SAKOWICZ: Immediately prior to the break I had just mentioned that after conducting several days of nocturnal surveillance at Turkey Swamp, we closed our investigation. I should add that the information provided by Mr. Jargowski was that this site was being used on a sporadic basis by dumpers. This was not a case where if you waited every night you would see someone come in.

The remote sensing equipment was set up in Turkey Swamp during April 1980. The investigative unit within the New York Inter-Agency Hazardous Waste Task Force coordinated with Mr. Jargowski with regard to this sensing equipment. It should be noted that investigative personnel did respond to this site when the monitoring equipment was activated. Both representatives from the inter-agency task force and Mr. Jargowski responded to the Turkey Swamp on May 10, 1980.

Two days after this incident on May 12, 1980, Mr. Jargowski contacted the division of criminal justice to advise us that he had subsequently learned the address of this ex-bulldozer operator and had in fact spoken to him. Mr. Jargowksi advised this State investigator that the individual did not have any knowledge of drums being buried within the parimeters of the Lone Pine landfill. This

individual was employed to bring clean fill into the active areas of the Lone Pine landfill so that it could be used as ground cover.

Allegedly, while scraping the clean fill from land contiguous to the landfill, this individual uncovered some drums. At that time, the State investigator discussed with Mr. Jargowski the possibility of this bulldizer operator being the same person who had been on the site the day of the fire. Mr. Jarkowski advised him that these were in fact two distinct individuals.

When Mr. Jarkowski provided the investigator with the address of this individual, the investigator responded to that location that date. In total, the investigator made three attempts to speak with this individual. Additionally, this State investigator spoke with neighbors in the area who professed to have no

knowledge of the individual. Based upon the fact that Mr. Jargowski had spoken with this individual and that he apparently had no relevant information, no further efforts were made to locate this person.

Returning now to the Turkey Swamp matter, contact was maintained with Mr. Jargowski until July 17, 1980, when it was reported to the New Jersey Inter-Agency Task Force by Mr. Jargowski that he had inspected a Turkey Swamp area. Since these inspections did not reveal any evidence of chemical waste dumping into or about the pond area, nor waste tanker track impressions, the investigation into Turkey Swamp was ceased and the sensing devices were in fact removed.

For purposes of setting forth the workload of those few investigators assigned to toxic waste matters, I would like to set forth some of the actions and

investigations undertaken by those investigators for the time period involved.

Criminal search warrants were executed at the SCP, Inc. facility in Newark, NJ on July 13, July 27, and September 11, 1978.

Arrests made and search executed at Price's landfill on November 15, 1978. Return of indictment against Scientific Chemical Processing on February 13, 1979.

Execution of criminal search warrants at Iron Oxide Corp. in Elizabeth on April 10, 1979.

The New Jersey Inter-Agency Strike Force officially began operations on July 1, 1979. It wasn't until July 1980, however, until all personnel were hired for that activity.

MR. GORE: Search warrants executed on vehicle containing drums of chemical waste on July 23, 1979. Excuse me. You

said it wasn't until July 1980. Your text reads January.

MR. SAKOWICZ. We started hiring investigators and personnel in July 1979. The actual date the task force took effect was July 1, 1979.

MR. GORE: But the next sentence says "It wasn't until January 1980 that all personnel were hired."

MR. SAKOWICZ: All personnel.

MR. GORE. All right.

MR. SAKOWICZ. We did not hire all of the investigators and support personel until January 1980.

MR. GORE: Go ahead.

MR. SAKOWICZ. That was the official date when the State police detectives were assigned to the task force.

Search warrants were executed at Duane Marine Corp. on August 9, 1979.

Search warrants executed at Sepan Chemical Co., Municipal Sanitary Landfill

Authority, and Modern Industrial Waste Corporation on September 12, 1979.

Assistance provided to Pennsylvania Attorney General's Office with regard to their execution of search warrants at Hudson Oil on September 14, 1979.

Search warrants executed on a Jersey Sanitation roll-off in East Brunswick on October 19, 1979.

Search warrants executed at Jersey Sanitation and Samsom Tank Cleaning on October 11, 1979.

The foregoing is a summary of some major activities undertaken by the investigative personnel assigned to hazardous waste investigations. It should be noted that during this time, a multitude of other matters required the time and energy of investigative personnel assigned to toxic waste unit.

The investigative file concerning Lone Pine landfill was officially closed

within the Division of Criminal Justice on March 6, 1980. This decision to officially close the Lone Pine file was made based upon existing priorities and the likelihood, or lack thereof, of retroactively building a criminal case against the Lone Pine landfill.

Additionally, the Lone Pine landfill was the subject of civil litigation at this time. Therefore, if additional facts came to light during the discovery phase of this litigation, it could then be transmitted back to the task force for its consideration.

The primary decision to close the criminal file on this matter was based upon available manpower resources. During the 2 months immediately proceeding this closure, the investigative personnel assigned to this unit were involved in the following action: indictment against Joseph Attanasi for attempted bribery of a

police officer; indictment returned against Jerome Lightman Attanasi Drum and William Holbrook; emergency response to discharge a tanker in North Jersey; execution of search warrants at Madison Industry on Februay 6, 1980; indictment of Iron Oxide Corp., Chemline and Perk Chemical Co. on February 19, 1980.

During the period of closeout, evidence was being presented with regard to the activities of Samsom Tank Cleaning, Jersey Sanitation and Chelsea Terminals. This indictment was returned on April 20, 1980. As the committee can plainly see, the investigative unit of the New Jersey Inter-Agency Task Force is involved in a myraid of investigation which often requires that actions be taken during the same period of time. Consequently reasoned decisions must be made so that the limited resources of the investigative unit could be directed to those

investigations which in the opinion of the task force members are deemed to be most appropriate.

On April 19, 1981, the Action Committee of the New Jersey Inter-Agency Task Force convened its scheduled meeting. At that time, it was resolved that for purposes of any continued criminal investigation of the Lone Pine lanfill, the office of the U.S. Attorney would assign an Assistant U.S. Attorney to coordinate the investigation and that the Division of Criminal Justice would assign a toxic investigator to work with the Office of the U.S. Attorney to develop a case. It was also resolved at that time that the appropriate action would be taken by either a Federal grand jury and the State grand jury if the information developed and warranted such action.

I am aware, of course, being sent by this committee through the U.S. Attorney's

Office requesting an investigation into this matter. We have acted upon that.

This completes my statement on the role of the Division of Criminal Justice with respect to Lone Pine and with respect to the investigative unit of the New Jersey Task Force for the appropriate period of time.

MR. GORE. Thank you very much.

We would now like to hear from Mr. Richard Dewling. If you could summarize your statement by focusing on the most relevant portions to the inquiry, we would appreciate it.

* * *

Appendix J

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	CR.82-200
v.	:	ORAL OPINION
HERBERT G. CASE, JR., et al.,	:	
	:	
Defendant.		

November 1, 1982
Trenton, New Jersey

BEFORE:

The Honorable DICKINSON R. DEBEVOISE, U.S.D.J.

APPEARANCES:

W. HUNT DUMONT, ESQ.,
United States Attorney
For the Government
By: CHARLES S. CRANDALL, ESQ., AUSA
-and-
A. PATRICK NUCCIARONE, ESQ., AUSA

JUSTIN WALDER, ESQ.
-and-
BARRY KOZYRA, ESQ.,
For Defendant Case

ANTHONY R. MAUTONE, ESQ.,
For Defendant Barnes

DINO D. BLIABLIAS, ESQ.,
For Defendant Sigmond

1 * * *

2 THE COURT: Defendants Herbert G. Case, Jr., Mack Barnes,
3 Leif R. Sigmond, and Scientific Chemical Processing Company,
4 Inc., which I shall refer to as SCP, have been indicted for
5 conspiracy to commit mail fraud (Count 1) and for 20 substan-
6 tive violations of the Federal mail fraud statutes (Counts 2
7 through 21).
8 SCP was in the business of transporting, treating,
9 recovering and disposing of industrial wastes. During the
10 period between June 1977 and October 1978, the period.
11 covered by the indictment, SCP maintain facilities at 411

12 Wilson Avenue in Newark and at 216 Paterson Plank Road in
13 Carlstadt, New Jersey. The Government alleges that beginning
14 on May 1, 1978 both SCP facilities received temporary operat-
15 ing authorization from the New Jersey Department of Environ-
16 mental Protection, which I shall refer to as the DEP. The
17 Government further alleges that SCP's Newark facility, which
18 was located within the Passaic Valley Sewerage Commission
19 district, was authorized only to dispose of certain wastes
20 into the sewer system and was not authorized to dump un-
21 treated waste into that system.
22 The indictment charges that defendants engaged in a

23 conspiracy which involved a continuing course of fraudlent

24 conduct on their part, including: (1) false representations

25 to generators of hazardous industrial chemical wastes that

1 these wastes would be lawfully
disposed of; (2) contracts
2 and agreements designed to induce
generators to do business
3 with defendants; (3) false statements
to Passaic Valley and
4 DEP designed to conceal defendants'
actual conduct; (4) the
5 payment of bribes to effect part of
the scheme, and (5) il-
6 legal dispositions of industrial
chemical wastes.
7 Defendants have filed a number of
motions. This opin-
8 ion will deal with all the motions
except those seeking a
9 bill of particulars and further
discovery, which will be
10 diposed of in another opinion.
11 The first motion was made on
behalf of all individual

12 defendants and is to dismiss the indictment for improperly

13 indicting defendants under 18 U.S.C. §§1341 and 1342.

14 Defendants' argument is when Congress passes specific

15 legislation dealing with a new subject and makes specified

16 conduct criminal, resort may no longer be had to the mail

17 fraud statute for prosecution. U.S. v. Maze, 414 U.S. 395

18 (1974).

19 Here, according to defendants, the essence of the of-

20 fense charged is illegal dumping of chemical waste into

21 the lower Hudson Bay and at Lone Pine Landfill. This

22 conduct is covered specifically by the Federal Water Pollu-

23 tion Control Act, 33 U.S.C., §1251, et seq., which has

24 criminal and civil sanctions.

25 It is unnecessary to rule upon the validity or scope of

1 the principle of law upon which defendants rely, namely that
2 the mail fraud statute cannot be utilized where the under-
3 lying offense is the subject of specific legislation. See
4 e.g. U.S. v. Henderson, 386 F. Supp. 1048 (S.D.N.Y. 1974),
5 U.S. v. Computer Science Corp., 511 F. Supp. 1125 (E.D. Va.
6 1981).
7 Whatever its validity and scope, that rule is simply
8 inapplicable here. The indictment does not charge an offense
9 defined by the Federal Water Pollution Control Act. It
10 charges an elaborate ongoing fraud. To be sure, one of the
11 results of the fraudulent scheme alleged in the indictment

12 is the illegal pollution of waters covered by the Federal

13 Water Pollution control Act. So the essence of the charge

14 is the fraudulent scheme, not water pollution.

15 In Henderson, the indictment contained two counts

16 charging an attempt to evade and defeat payment of income

17 taxes, three counts charging use of the mails in furtherance

18 of a scheme to defraud, and two counts charging subscribing

19 to false and fraudulent statements which defendant did not

20 believe to be true. As the Court pointed out, the scheme

21 to defraud under the mail fraud counts involve the same

22 fraudulent conduct as was involved in the income tax fraud

23 counts. A totally different situation is involved in the

24 present case. In the first place, the indictment does not

25 contain both mail fraud and pollution counts. More

1 important, unlike Henderson, the offenses charged in the
2 indictment under the mail fraud statute are totally dissimi-
3 lar to the offenses defined in the Water Pollution Control
4 Act. Fraud is the essence of this indictment; befouling
5 water is the essence of the Water Pollution Control Act.
6 The criminal penalties imposed by the two statutes reflect
7 the differences in the seriousness of the crimes charged.
8 Therefore, defendants' motion on this ground will be denied.
9 The second motion was brought on behalf of all indiv-
10 idual defendants to suppress evidence illegally seized by

11 the State of New Jersey and the fruits thereof and for a

12 hearing thereon.

13 Defendants argue and point out quite correctly that the

14 defendant has the right to have all evidence obtained from

15 an illegal search and seizure suppressed. This rule is

16 applied to prevent evidence obtained by state officers in

17 an unreasonable search and seizure from being used against

18 a defendant in a Federal criminal trial.

19 Elkins v. United States, 364 U.S. 206 (1960).

20 Defendants assert that in this case evidence was

21 seized pursuant to warrants which a state court found were

22 not based on probable cause. The evidence was subsequently

23 turned over by the State to Federal authorities.

24 It is clear that the corporate officers, such as defend-

25 ants, who maintained their place of employment at the

1 corporation's offices have standing, that is a sufficient
2 expectation of privacy, to challenge a search of those of-
3 fices. The three defendants were all directors, officers
4 and owners of a closely held corporation and have the bene-
5 fit of this ruling.
6 The issue of probable cause is discussed in United
7 States v. Nilsen, 482 F. Supp 1335 (D.N.J. 1980). The
8 Court reviewing this, that is the Federal Court reviewing
9 this issue need only consider facts set forth in the affi-
10 davit furnished to support the application for the search
11 warrants as in the first instance in deciding if there was

12 probable cause.

13 It is defendants' contention that the activities de-

14 tailed in the affidavits from which the search warrants were

15 issued by the State Court in this case were entirely inno-

16 cent and consistent with SCP's business, and the events

17 described were 18 days or more prior to the searches. When

18 a court concludes that the information contained is not

19 current, the evidence seized must be exlcuded. Rugendorf v.

20 United States, 376 U.S. 528, rehearing den. 337 U.S. 940

21 (1964). In U.S. v. Johnson, 561 F.2d 285 (10th Cir. 1972),

22 the court noted that when facts recited indicate activity

23 of a protracted and continuous nature, a course of conduct,

24 the passage of time becomes less significant.

25 Defendants' argument, according to the Government, is

1 based on factually inaccurate
premise. The Government has
2 submitted affidavits tending to show
that the Federal invest-
3 gation of Lone Pine Landfill began in
April 1981 and was
4 based on information received from an
informant totally
5 independent of the State
investigation. In response to the
6 information, a Grand Jury subpoena was
issued to SCP for
7 production of records and the
company's attorney, Donald J.
8 Rinaldi, Esq., who had represented SCP
in the 1978 State
9 proceedings, allowed the Government to
examine them and gave
10 his permission to use them in the
Federal investigation.

11 Defendants answer this contention by insisting that the
12 information was furnished to the Government concerning Lone
13 Pine before the Government began its investigation of Lone
14 Pine and further argued that the consent given by Mr. Rinaldi
15 was on behalf of the corportion and not on behalf of the
16 individual defendants, and that Mr. Rinaldi was unaware that
17 the Federal and State Government Task Force on Pollution had
18 agreed to cooperate at the time or prior to the time when
19 the subpoena was issued.
20 The Government's contention basically is, first, that
21 SCP's consent and failure to contest the Grand Jury sub-

22 poena dissipates any possible taint in the State proceeding;

23 (2) it would be inappropriate to suppress the evidence in

24 view of the unrelated nature of the Lone Pine Landfill

25 investigation to the earlier State investigation; and (3)

1 suppression is unwarranted because probable cause did
2 exist for the New Jersey search of the SCP Newark plant.
3 MR. WALDER: You said did exist? I think you meant did
4 not.
5 THE COURT: I welcome that when you are correcting me.
6 I have examined carefully the records which defendants
7 submitted in connection with the issuance of the 1978 search
8 warrant by Judge Scalera, then the Criminal Assignment Judge
9 of Essex County, and now the Assignment Judge of that county.
10 After making that inquiry, I find it difficult to comprehend
11 why after briefing and argument and an initial refusal to

12 suppress this evidence, Judge Walls, acting sua sponte,
13 decided to enter an order suppressing the evidence. The
14 nocturnal activities at SCP's Newark plant and the other
15 facts recited in the affidavits supporting the issuance of
16 the warrant certainly at first blush suggest the issuance
17 of probable cause to me.
18 In addition to the nighttime activity which was recited
19 by the persons giving affidavits in support of the search
20 warrant, affidavits with respect to trucks drawing up to
21 the premises at Newark SCP, of piping waste material into
22 the sewers and testing the sewers both above and below the

23 point where the piping was being done
with noxious fumes
24 and odors coming from the sewers below
the point of dis-
25 charge into the sewers while not being
found above the

1 point of discharge. These and numerous other circumstances
2 taken in conjunction with the issuance of the warrant seemed
3 to me to provide, to have provided probable cause for the
4 issuance of these warrants and were I Judge Walls, I would
5 not have arrived at the same conclusion that he arrive at.
6 I would have followed the original determination of Judge
7 Scalera who authorized the issuance of the warrants on the
8 basis of the facts presented to him which are contained in
9 the reocrds in this case.
10 Further, the circumstances under which the Government
11 obtained the documents were entirely proper, and I think they

12 are unaffected by any taint which may have existed when the
13 State obtained the doucments. These are not the product of
14 an unlawful State search turned over to Federal authorities
15 on a silver platter proscribed in Elkins, supra. The docu-
16 ments were obtained through the lawful use of the Federal
17 Grand Jury process. They involved an offense which the
18 Federal Government began investigating, I conclude, inde-
19 pendently of the State pollution investigation and which
20 followed by years the State investigation out of which the
21 search warrants had originally been issued. They were

22 produced with the consent of SCP
counsel on behalf of the
23 corporation, and I cannot believe that
its consent would
24 have been any different had he known
that the Federal and
25 State authorities had been working in
conjunction, since

1 there was some limit on the use to which the Government
2 could put the information which it obtained, and it is
3 logical to think law-enforcement officials would exchange
4 information.
5 If the attorney for SCP had not given his consent,
6 there was nothing to prevent the Government from pursuing
7 the subpoena which is at issue to obtain the documents for
8 the Federal Grand Jury investigating Lone Pine Landfill
9 situation. Thus, I think there is nothing to support that
10 when the Government obtained the attorney's permission it
11 was any way limited to the use which it could put the docu-

12 ments which it inspected.

13 The defendants' motion for suppression and for a fur-

14 ther hearing will be denied.

15 As to the third motion, which is brought by all of the

16 defendants, this is a motion to dismiss Counts 4 through 7

17 and 9 through 14 for the reasons that the acts alleged are

18 outside the scope of 17 U.S.C. 1341 and 1342.

19 These counts allege a scheme to defraud and the mailing

20 of an invoice to one of four different companies for the

21 purpose of executing the scheme or artifice. On the basis

22 of the indictment, mailings must have been made for the pur-

23 pose of executing the fraud. U.S. v. Tarnopol, 561 F. 2d

24 466 (3d Cir. 1977).

25 Here, according to the defendant, the fraud charged is

1 not to obtain money, but to defraud "regarding the trans-
2 portation, treatment, recovery and disposal of industrial
3 chemical wastes."
4 The test to be applied is set forth in United States v.
5 Brown, 583 F. 2d 659 (3d Cir. 1978); cert. den. 440 U.S. 909
6 (1979).
7 ". . . if the mailing is a part of executing the fraud
8 or is clearly related to the scheme, a mail fraud charge
9 will lie, even though the mailing was also related to a
10 business purpose." At 668.
11 The indictment alleges SCP falsely represented to gen-
12 erators that their wastes would be lawfully transported and

13 disposed of. Thus, the invoices were bills for services

14 which, contrary to defendants' representations, were not

15 performed and were designed to procure payment for fraudu-

16 lent activity. As such, they meet the Brown test as being

17 clearly related to the fraudulent scheme even though they

18 were related to a business purpose also.

19 Defendants' motion to dismiss Counts 4 through 7 and

20 9 through 14 on this ground is denied.

21 The defendants' fourth motion is made on behalf of all

22 of the defendants to require the Government to elect upon

23 which counts of the indictment to proceed for the reason

24 that the indictment charges duplicate mailings.

25 Counts 19 through 21 charge mailings of special waste

1 manifests to DEP; Counts 8, 16, 17, 18 charge mailings of
2 virtually identical letters to SCP customers; Counts 4
3 through 7 and 10 through 14 charge mailings of invoices to
4 customers, three to Grumman Aerospace Corporation, three to
5 Rohm and three to Nepera. It is clear that duplicate charges
6 and excess mailings should not be charged in a single
7 indictment. Here is separate mailing is in furtherance of
8 the scheme to defraud constituting a separate violation of
9 18 U.S.C. 1341. U.S. v. Joyce, 449 F. 2d 9 (7th Cir. 1974),
10 cert. den. 419 U.S. 1031 (1974).
11 Clearly the indictment in this case does not allege the

12 duplicate mailings. Each was a different mailing alleged to
13 be in furtherance of the overall scheme.
14 Defendants' motion to require the Government to elect
15 between them will be denied.
16 Motion No. 5 was filed on behalf of all defendants for
17 a separate trial and on each of Counts 2 through 21 or for
18 an order requiring the Government to elect upon which counts
19 to proceed.
20 In deciding whether to sever counts, a court must bal-
21 ance the possibility of prejudice against the governmental
22 interest and trial economy.
23 According to the defendants, prejudice will arise from

24 the trial of all these counts
together, from embarrassment
25 in presenting separate defenses,
jury's use of evidence of

1 one crime to convict in another, the fact the jury may ac-
2 cummulate the evidence to convict when it would not do so if
3 counts were tried separately, and hostility engendered by
4 charging several crimes.
5 Defendants seek to apply the analysis applicable to
6 Rule 403 and Rule 404(b) to this motion.
7 To suggest that each of the substantive mail fraud
8 counts should be tried separately borders on the absurd.
9 Each is dependent on proof of the same fraudulent scheme.
10 Each simply alleges a separate mailing in furtherance of the
11 scheme, and each may unquestionably be proved as an overt

12 act in connection with the conspiracy charge contained in
13 Count 1.
14 There is no basis for concluding that defendants would
15 be prejudiced in any way by the joinder of these counts.
16 The jury is perfectly capable of understanding that one
17 underlying fraudulent scheme is alleged and that each mail-
18 ing made pursuant to the scheme is a separate defense under
19 the statute. A jury is also perfectly capable of understand-
20 ing that as to Counts 2 through 21 the Government must not
21 only prove the underlying fraudulent scheme but also the
22 particular mailing involved.

23 Proper judical administration compels trying these

24 counts together, and there is no countervailing prejudice.

25 Defendants' motion for a separate trial will be denied.

1 Motion No. 6 relates to the bill of particulars.

2 Motion No. 7 was brought on behalf the Defendant

3 Case and is a motion to dismiss the indictment on multiple

4 grounds.

5 First Case alleges the Government had advised that

6 it has no envelopes to establish mailings nor has it disclosed

7 it has any other proofs to establish mailings. SCP fre-

8 quently, according to Defendant Case, hand-delivered its

9 correspondence. The SCP employees who were questioned before

10 the Grand Jury were not asked about hand-delivery as opposed

11 to mailing. Therefore, the United States presented no proofs

12 to the Grand Jury as to the mailings.

13 According to Defendant Case, there should be disclosure

14 of what went on before the Grand Jury to fill the void under

15 Federal Rules of Criminal Procedure 6(e)(3)(C)(ii) or else

16 an in camera inspection by the Court.

17 Secondly, Defendant Case states the Government fails to allege an object of

18 the alleged scheme to defraud. There must be a deprivation

19 of property rights or intangible rights but here no count

20 alleges either.

21 In effect, the indictment does not state what the vic-

22 tims were defrauded of.

23 Thirdly, Defendant Case urges that the Government

24 charges a scheme to defraud the citizens of New Jersey for

25 unspecified, intangible rights, as well as the New Jersey

1 DEP, Passaic Valley Sewerage Authority and generators of
2 industrial chemical waste.
3 The mail fraud statute requires some fiduciary nexus
4 between those defrauded where intangible rights have been
5 affected. U.S. v. Margiotta, No. 82-1025, slip opinion
6 (2d Cir. July 27, 1982). In that case the political party
7 leader played such a dominant role in municipal and county
8 government that he could be found to have a fiduciary duty
9 to the citizens of the municipality and the county
10 Finally, Defendant Case urges that the use of the mails
11 was not essential to the scheme or artifice to defraud but

12 was merely employed for the sake of convenience, again

13 citing U.S. v. Tarnopol.

14 In each case, according to the Defendant Case, the

15 question is whether the mailings were sufficiently closely

16 related to the scheme to bring the conduct within the mail

17 fraud statutes.

18 Turning to the first ground, proof of the use of the

19 mails, the fact that the Government has no envelopes to

20 establish mailings or that SCP's employees who testified

21 before the Grand Jury were not asked about mailings is not

22 sufficient justification to conclude that the Grand Jury

23 did not have before it proof that the matter relied on as

24 mailings were in fact mailed. There are a number of other

25 ways in which that element of the offense can be proved.

1 If there is an absence of the proof at the trial, some or
2 all of the counts can be dismissed. It is not ground to
3 permit disclosure of Grand Jury proceedings or dismissal.
4 However, I will examine in camera Grand Jury testimony
5 provided by the Assistant United States Attorney in order to
6 determine that there was in fact evidence of mailing pre-
7 sented to the Grand Jury, but unless I find to the contrary
8 after such examination, this will not constitute a grounds
9 for dismissal.
10 As to the object of the conspiracy, that is clearly
11 alleged, which is namely to make false statements to induce

12 generators and public entities to believe the defendants
13 were disposing of hazardous wastes legally, all so that
14 defendants could continue their business and continue to
15 charge the generators. The object of the conspiracy is
16 properly alleged.
17 As to the scheme to defraud citizens of New Jersey,
18 there is a plain and direct nexus between defendants and
19 the three categories of entities which are alleged to have
20 been the victims of the fraud; namely, the generators with
21 whom defendants contracted, the Passaic Valley Sewerage
22 Commission whose facilities it sued to dispose of industrial

23 wastes, and the DEP from which SCP received its permit,

24 which regulated SCP's operations, and to which SCP reported

25 after the hazardous waste manifest system went into effect.

1 Only with respect to the fraud against the citizens of
2 New Jersey does the nexus become more doubtful. U.S. v.
3 Margiotta, supra, Judge Kaufman, noted that a public offi-
4 cial may be prosecuted under 18 U.S.C. §1341 when his
5 alleged scheme to defraud has as its sole object the
6 deprivation of intangible and abstract political and civil
7 rights of the general citizen. Slip opnion at 4164.
8 In that case an influential political party leader
9 holding no public office was charged with mail fraud for
10 arranging for the hiring of a particular insurance broker

11 by a municipality and county in consideration of the broker
12 distributing 50 percent of his commission as directed by
13 the party leader. The court stated that the case raised
14 the question whether such a person owes a fiduciary duty to
15 the citizenry not to deprive it of certain political rights
16 so as to lay the basis for a mail fraud prosecution. The
17 clear implication was that if a person were neither a public
18 official nor a person participating substantially in the
19 operation of the government, he would not owe a fiduciary
20 duty to the public at large not to deprive it of certain

21 intangible political rights. Thus he would not owe duties

22 to the public which might lay the basis for mail fraud

23 prosecution.

24 In the present case, defendants were not public offi-

25 cials nor did they participate substantially in the

1 operation of the government. They simply dealt with certain
2 government agencies.
3 Consequently, if the indictment charged only the defend-
4 ants conducted a fraudulent scheme, the object of which was
5 to deprive the citizens of New Jersey of their right not to
6 have the state water polluted in violation of the laws, the
7 indictment might well be subject to dismissal under the
8 principle of the Margiotta case.
9 However, the indictment also charges fraud on two
10 governmental agencies and on generators of hazardous waste.
11 Insofar as they are concerned, the indictment alleges a

12 nexus between the defendants and the defrauded entities

13 which supports a Section 1341 charge.

14 The fraud on the public allegations of the indictment

15 may be viewed as rhetorical surplusage. That language should

16 be stricken from the indictment, and the Government will be

17 instructed not to argue to the jury fraud on the public as

18 distinguished from fraud on public entities. With that

19 exception, defendants' motion to dismiss on object of the

20 conspiracy grounds will be denied.

21 Defendant Case moves for a severance from the other

22 defendants. He contends that except for three special

23 waste manifests signed by Barnes and
certain unspecified
24 deliverance to Lone Pine, no unlawful
agreement is alleged
25 to exist between him and Barnes, and
Case anticipates the

1 Government will attempt to prove relationship between Barnes
2 and Sigmond not involving Case. Case also anticipates the
3 Government will attempt to prove Rule 405(b) offenses as
4 to Barnes.
5 He urges that evidence related to a different time span
6 will be prejudicial as will joinder of Case with persons
7 with whom he has had no unlawful relationship.
8 Finally he contends no facts are alleged which suggest
9 unlawful conspiracy between him and Barnes and thus multiple
10 conspiracies are involved as prohibited in Kotteokus v.
11 United States, 328 U.S. 750 (1945) and U.S. v. Camiel,

12 No. 81-2933 (3d Cir. September 7, 1982).

13 No basis has been established to sever Case's trial

14 from the trial of the other defendants.

15 Rule 8(b) of the Federal Rules of Criminal Procedure

16 says that it is proper to charge in a single indictment

17 persons alleged to have participated in the same acts or

18 transactions. That is clearly the case here. In a con-

19 spiracy charge defendants should be tried together.

20 Under Rule 14 as severance may be granted if prejudice

21 is shown.

22 There is nothing to show prejudice. There is nothing to

23 show that there were separate
conspiracies involving some but
24 not all of the defendants. Thus,
Kotteokus v. United States,
25 supra, and U.S. v. Camiel, supra, are
not applicable.

1 Even if, as Case suggests, he was not part of the con-
2 spiracy during the entire time of its existence, that is not
3 a reason to sever.
4 If the United States offers proof of prior crimes under
5 404(b) against co-defendants, I can attend to that at the
6 time of the offer and determine under Rule 403 whether there
7 would be undue prejudice.
8 If there would be, the evidence can be excluded, and if
9 not, it would be admitted.
10 The present showing or rather lack of showing does not
11 require a severance.
12 Case's motion for a severance will be denied, as the

13 consideration of sound judicial administration requires a
14 joint trial and there is no prospect of undue prejudice
15 that has been established.
16 Motion 9 is for a bill of particulars.
17 I am going to give you a letter on the motions for a
18 bill of particulars rather than argue them out. If you want
19 to add anything, let me have it in the next few days.
20 Otherwise I will just give you a disposition by mail, not
21 by deliver.
22 - - -

APPENDIX K

SUPERIOR COURT OF
NEW JERSEY
COUNTY OF ESSEX

STATE OF NEW JERSEY :
:SS. AFFIDAVIT
COUNTY OF ESSEX :

I, WAYNE SMITH, Police Officer for the Newark Police Department, of full age, being duly sworn on my oath according to law deposes and says:

1. On June 22, 1978, at 8:16 p.m., while assigned to mobile patrol unit number 317, I was dispatched to 411 Wilson Avenue, Newark, in response to a burglar alarm for a suspected break and entry.

2. Upon arrival at 411 Wilson Avenue, I met Robert W. Flett who was a guard on the premises. Because it was a silent alarm, Robert W. Flett was not aware of the alarm. I told him about the alarm at this time. I thought it strange that Mr. Flett was wearing a "gas mask" as used by the armed forces.

3. Mr. Flett and myself went to the area where the alarm was located; I observed that the ceiling of this location had been broken into and that the door to this office area was unlocked.

4. Mr. Flett told me that (1) the office area was secured and locked at the end of the work day at approximately 5:00 p.m. and (2) the ceiling was not broken as it was at this time.

5. I then commenced a search of the building complex for the suspect. I was accompanied by Robert W. Flett.

6. During our search of the building complex, I observed several hundred 55 gallon drums in the front building. I observed that these barrels were filled.

7. During the search for the suspect, I observed an area located between the front building and a green one-story garage like structure to the rear of this building. I observed a hose,

approximately 3" in diameter, leading from the outside rear wall of this green building to a hole, approximately 3 feet by 4 feet.

8. I observed water running into this hole from another direction through a drain ditch cut into the floor. Because of this, I believe that this hole led to the sewers.

9. I have been assigned to the 317 district which covers 411 Wilson Avenue and the surrounding area for approximately three years.

10. On numerous occasions, I smelled pungent odors in the area of 411 Wilson Avenue.

11. Because of my prior employment as a senior lab technician at Engelhardt Industries in Newark, I determined that the odors were from chemicals.

12. On various occasions, I observed a connection between tanker trucks coming

to 411 Wilson Avenue during night time hours and the pungent odors which I detected coming from the manhole cover in front of 411 Wilson Avenue and the manhole cover immediately to the East of the first manhole cover.

13. On these occasions, I also checked the manhole cover immediately to the West of 411 Wilson Avenue; it did not have the same chemical odors as the manhole covers to the East of 411 Wilson Avenue as described in paragraph #12.

14. I made the observations described in paragraphs #12 and #13 on the following dates:

January 26, 1978 11:00 p.m.

January 27, 1978 6:50 p.m.

February 1, 1978 5:00 a.m.

February 3, 1978 12:30 a.m.

February 19, 1978 12:50 a.m.

March 23, 1978 5:50 p.m.

April 26, 1978 3:00 a.m. (approx.)

Wayne Smith
Police Officer

Sworn and subscribed to
before me this day
of July, 1978.

APPENDIX L

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION:
CRIMINAL
ESSEX COUNTY

STATE OF NEW JERSEY)
)ss. AFFIDAVIT OF
COUNTY OF ESSEX) SEARCH WARRANT
Search Warrant
#AG7-10-77

Investigator RICHARD CHILDS, of full age, being duly sworn according to law, upon his oath deposes and says:

I

I am a duly constituted State Investigator in the Office of the New Jersey Attorney General, Division of Criminal Justice. I have been a Law Enforcement Officer for a period of apprxoimately ten (10) years divided between the Newark Police Department and the Economic Crime Section of the Division of Criminal Justice. Throughout this period, I have been involved in matters involving major crimes, investigative auditing, embezzlements, frauds and economic crimes.

II

I want to search (A) the buildings located at 411 Wilson Avenue, Newark, New Jersey, (B) the yard area, which is enclosed by a fence, located to the side and rear of the said building complex located at 411 Wilson Avenue, Newark, New Jersey (C) any individuals, within the building complex and yard area, who are assisting in and within close proximity to the offloading of chemicals at the locations enumerated above in objects "A" and "B", and (D) any tanker and truck which is engaged in the offloading of chemicals at the time when warrants are executed.

I want to search the above buildings, trucks and yard area because I believe that chemical wastes are being pumped into the public sewer systems contrary to the law. I believe that tanker trucks are being used to offload these chemicals directly into the sewer by means of hoses

and/or pipes connecting the tanker truck to an interior portion of the building complex where an open hole leading to a sewer is located. I believe this to be a public nuisance, in violation of N.J.S.A. 2A:85-1.

III

That the facts tending to establish the grounds for this application and the probable cause of my belief as aforesaid, are as follows:

1. I conducted a surveillance of the Scientific Chemical Processing facility located at 411 Wilson Avenue in Newark, New Jersey, on Tuesday, June 13, 1978 from 7:00 o'clock a.m. to 5:00 o'clock a.m. Wednesday, June 14, 1978. This was a mobile and ambulatory surveillance.

2. At 7:15 p.m. on June 13, 1978, I observed a cab and tanker enter the Scientific Chemical Processing facility (hereinafter referred to a "facility"). It was a silver tanker in color.

3. At 7:25 p.m. I positioned myself to the rear of the "facility" and with binoculors observed the silver tanker standing alongside a two story, brick building which was greenish in color and is labeled "A" on the attached photograph. This green building is located in the easterly portion of the building complex.

4. I observed that the cab which was pulling the tanker had the name "Scientific Chemical, Carlstadt, New Jersey" printed on the door. The silver tanker bore number 365005 on its rear surface.

5. I observed the top vents of the tanker in an open position and a hose from the tanker running from the tanker, along the ground and then to another section of the building complex.

6. I observed that the building complex is a grouping of various structures apparently joined in a row-like

fashion. One portion of the complex is the two-story greenish hued building referred to in paragraph 3 above. Another portion is a one-story garage-like structure, also of greenish hue, with garage doors facing the rear of the main building complex into the yard area of the facility.

7. I remained in the area, keeping the rear of the building complex under surveillance until approximately 8:30 p.m. on this date, June 13, 1978. I observed the tanker and cab, heretofore described in paragraph number 4 above, remain in the same position as described in paragraph 3 above.

8. I have reviewed temporary operating authorizations issued by the New Jersey Department of Environmental Protection to Scientific Chemical Processing, Inc. Permits were issued on May 9, 1978 for two locations: 411 Wilson Avenue in

Newark and 216 Paterson Plant Road in Carlstadt, New Jersey.

9. The operating authorizations are to conduct special waste facilities to transfer, store, reprocess, reclaim, recover, blend and treat chemical wastes.

10. Based upon my observations and the statements set forth in the accompanying affidavits of Investigator Nicholas Russo and Police Officer Wayne Smith, whose affidavits are made part of this application for the issuance of search warrants, I have probable cause to believe that tanker trucks are illegally disposing of chemical wastes under cover of darkness into the sewers transversing the City of Newark.

IV

Search warrants are sought for the following entities:

A. BUILDING COMPLEX

The building complex is located at 411 Wilson Avenue in Newark, New Jersey; this complex is situated on the northerly side of Wilson Avenue subjacent to the Wilson Avenue underpass. The complex is composed of contiguous buildings and are of red brick composition and are two-stories each. The complex is marked with the number 411 positioned above the second story windows on the most easterly portion of the complex. The complex has four (4) entrance doors facing Wilson Avenue. The rear of the building complex is predominantely composed of contiguous buildings, two-stories in height and of red brick composition toward the easterly section is a two-story aqua structure of concrete composition which protrudes northerly from the main complex but which appears to be attached to the main red brick complex heretofore described to the west of this two-story aqua structure is a one-story

garage like structure which is also aqua in color. Located on the north face of this garage-like structure is an opening the approximate size of a garage entrance way. To the west of this garage door opening is a pedestrian entrance door leading to the inside of this one-story aqua structure.

Although there are four (4) entrance ways facing the Wilson Avenue overpass, it is known that the interior portions of the building complex is a warehouse-like facility with large areas of open storage not directly correlated to each entrance door.

B. YARD AREA

The yard area located to the northerly and westerly directions immediately contiguous to the building complex known as 411 Wilson Avenue in Newark. The yard area is enclosed by a cyclone fence approximately eight (8) feet in height. The fence is topped with three (3) strands

of barbed wire. The yard area has property facing Wilson Avenue approximately 500 feet in length; it has a depth of approximately 700 feet in length; it is irregularly rectangular in shape. Within this yard area are located various warehouse-like structures, yard vehicles (including tankers, trucks, forklifts and other motorized vehicles).

C. TANKER VEHICLES

Any and all tanker vehicles parked near the two (2) green-hued buildings described in paragraph IV (A) above. On June 13, 1978, I observed a large silver tanker with an estimated capacity of 8,000 gallons which bore identification number 365005 and which was being pulled by a cab bearing the name "Scientific Chemical, Carlstadt, New Jersey".

It is requested that authorization be given to search this silver tanker and cab, as well as any other tanker or

tankers which park near the green hued buildings which are believed to be the specific areas where chemical offloading is occurring.

D. INDIVIDUALS

Those individuals who are within the area of the green hued buildings when a tanker vehicle is connected to the hose and/or pipe heretofore described.

Any individual who is either a driver or passenger of a tanker vehicle which is connected to the hose and/or pipe heretofore described.

V

I am making application for search warrants in order to seize the following items:

(1) Samples of substances being transported and/or stored in tanker vehicles.

(2) Bills of lading, New Jersey Department of Environmental Protection manifest reports and other documentary evidence which would indicate the types of substances being

transported, stored, refined, reprocessed, treated or recovered by Scientific Chemical Processing.

(3) Bills of lading, vendor contracts, invoices, and other documentary evidence showing the ultimate disposition of chemical wastes being accepted by Scientif Chemical Processing and other subsidiaries and subdivisions which at this stage are unknown.

(4) Samples of substances being discarded into the sewers of Newark.

VI

I have observed that the complained of activity occurs during the evening and nocturnal hours. I personally observed the suspect activity on June 13, 1978 at approximately 7:25 p.m. The accompanying affidavit of Police Officer Wayne Smith states that he has observed the complained of activity on many occasions usually during the periods of dusk and darkness.

In that the suspected illegal activity occurs during the non-daylight hours, it is requested that the Court authorize

the execution of the search warrants at any hour of the day or night.

Wherefore deponent prays that search warrants may be issued authorizing a search of the aforesaid persons, vehicles, premises and such persons as may be in and upon such premises and vehicles in the manner provided by law.

_____
Richard Childs,
Investigator

Sworn and subscribed to
before me this day
of , 1978.

_____
Judge of the Superior Court

APPENDIX M

SUPERIOR COURT OF
NEW JERSEY
COUNTY OF ESSEX

STATE OF NEW JERSEY)
) SS. AFFIDAVIT
COUNTY OF ESSEX)

I, Nicholas M. Russo, Investigator for the New Jersey Attorney General Office, Division of Criminal Justice, of full age, being duly sworn on my oath according to law, deposes and says:

1. I conducted a surveillance of the Scientific Chemical Processing Facility located at 411 Wilson Avenue in Newark, New Jersey on Tuesday from 7:00 o'clock a.m., June 13, 1978 and to 5:00 o'clock a.m., Wednesday, June 14, 1978. This was a mobile and ambulatory surveillance.

2. Between 7:40 p.m. and 7:46 p.m., I walked Wilson Avenue for the length of the building complex known to house Scientific Chemical Processing and known

to me as 411 Wilson Avenue.

3. I observed a manhole cover directly in front of 411 Wilson Avenue and in close proximity to the most easterly entrance door.

4. At 7:41 p.m. and 7:43 p.m., while standing near this manhole cover, I heard what seemed to be the sounds of gushing liquids coming from the manhole cover. I detected the odor of chemicals coming directly from the manhole cover.

_____
Nicholas M. Russo,
Investigator

Sworn and subscribed to
before me this day of
July, 1978.

_____

APPENDIX N

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
ESSEX COUNTY

STATE OF NEW JERSEY)
)SS CRIMINAL SEARCH
COUNTY OF ESSEX) WARRANT

To Investigator Richard Childs, any officer of the New Jersey Division of Criminal Justice, any officer of the Newark Police Department or any officer of any law enforcement agency having jurisdiction.

1. This matter being opened to the Court by Richard Childs on application for the issuance of search warrants for the building complex described below and the Court having reviewed the affidavits of Richard Childs, Investigator Nicholas Russo and Police Officer Wayne Smith and being satisfied therefrom that located thereon are:

(1) Samples of substances being transported and/or stored in tanker vehicles.

(2) Bills of lading, New Jersey Department of Environmental Protection manifest reports and other documentary evidence which would indicate the types of substances being transported, stored, refined, reprocessed, treated, or recovered by Scientific Chemical Processing.

(3) Bills of lading, vendor contracts invoices, and other documentary evidence showing the ultimate disposition of chemical wastes being accepted by Scientific Chemical Processing and other subsidiaries and subdivisions which at this stage are unknown.

(4) Samples of substances being discarded into the sewers of Newark.

and that probable cause exists for the issuance of such warrant;

2. You are hereby commanded to search the building complex described below and to serve a copy of the warrant on such person or on the person in charge or control of such building complex;

3. You are hereby ordered, in the event you seize any of the described articles, to give a receipt for the property so seized to the person from whom it

was taken or in whose possession it was found, or in the absence of such person to leave a copy of this warrant together with such receipt in or upon the said premises from which the property is taken.

4. You are authorized to execute this warrant within ten (10) days from the issuance hereof, at any hour of the day or night and thereafter to forthwith make prompt return to me with a written inventory of the property seized hereunder.

5. The following is a description of the building complex to be searched:

> The building complex is located at 411 Wilson Avenue in Newark, New Jersey; this complex is situated on the northerly side of Wilson Avenue subjacent to the Wilson Avenue underpass. The complex is composed of contiguous buildings and are of red brick composition and are two-stories each. The complex is marked with the

number 411 positioned above the second story windows on the most easterly portion of the complex. The complex has four (4) entrance doors facing Wilson Avenue. The rear of the building complex is predominately composed of contiguous buildings, two stories in height and, or red brick composition toward the easterly section, is a two story aqua structure of concrete composition which protrudes northerly from the main complex but which appears to be attached to the main red brick complex heretofore described; to the west of this two-story aqua structure is a one-story garage-like structure which is also aqua in color. Located on the north face of this garage-like structure is an opening the approximate size of a garage entrance way. To the west of this garage door opening is a pedes-

trian entrance door leading to the inside of this one-story aqua structure.

Although there are four (4) entrance ways facing the Wilson Avenue overpass, it is known that the interior portions of the building complex is a warehouse-like facility with large areas of open storage not directly correlated to each entrance door.

6. Given and issued under my hand at the Cith of Newark at 2:50 o'clock p.m., this 10th day of July, 1978.

_____ l/s
Nicholas Scalera,
J.S.C.
Judge of the Superior Court.

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
ESSEX COUNTY

STATE OF NEW JERSEY)
)SS CRIMINAL SEARCH
COUNTY OF ESSEX) WARRANT

To Investigator Richard Childs, any officer of the New Jersey Division of Criminal Justice, any officer of the Newark Police Department or any officer of any law enforcement agency having jurisdiction.

1. This matter being opened to the Court by Richard Childs on application for the issuance of search warrants for the building complex described below and the Court having reviewed the affidavits of Richard Childs, and being satisfied therefrom that probable cause exists to believe a violation of N.J.S.A. 2A:85-1 exists, that is the existence of a public nuisance and that located thereon are:

(1) The pit area, hereto described,

located between the one-story garage-like aqua colored structure described in paragraph IV and the main portion of the building complex fronting on Wilson Avenue in Newark.

(2) The drainage trenches used to channel water and for chemicals to the pit area heretofore described.

(3) The hoses and pipes used to channel the flow of chemicals from the rear of the building to the pit area heretofore described.

(4) The interior areas at 411 Wilson Avenue used to store 55 gallon drums of chemicals.

and that probable cause exists for issuance of such warrant;

2. You are hereby commanded to search and photograph the building complex described below and to serve a copy of the warrant on such person or on the person in charge or control of such building complex;

(3) You are hereby ordered, in the event you seize any of the described articles, to give a receipt for the property so seized to the person from whom it

was taken or in which possession it was found, or in the absence of such person to leave a copy of this warrant together with such receipt in or upon the said premises from which the property is taken.

4. You are authorized to execute this warrant within ten (10) days from the issuance thereof, between the hours of 7:00 a.m. and 6:00 p.m. and thereafter to forthwith make prompt return to me with a written inventory of the property seized hereunder.

5. The following is a description of the building complex to be searched:

The building complex is located at 411 Wilson Avenue in Newark, New Jersey; this complex is situated on the northerly side of Wilson Avenue subjacent to the Wilson Avenue underpass. The complex is composed of contiguous buildings and are of red brick composition and are two-stories

each. The complex is marked with the number 411 positioned above the second story windows on the most easterly portion of the complex. The complex has four (4) entrance doors facing Wilson Avenue. The rear of the building complex is predominantly composed of contiguous buildings, two stories in height and, of red brick composition toward the easterly section, is a two story aqua structure of concrete composition which protrudes northerly from the main complex but which appears to be attached to the main red brick complex heretofore described; to the west of this two-story aqua structure is a one-story garage-like structure which is also aqua in color. Located on the north face of this garage-like structure is an opening the approximate size of a garage entrance way. To the west of this

garage door opening is a pedestrian entrance door leading to the inside of this one-story aqua structure.

Although there are four (4) entrance ways facing the Wilson Avenue overpass, it is known that the interior portions of the building complex is a warehouse-like facility with large areas of open storage not directly correlated to each entrance door.

6. Given and issued under my hand at the City of Newark at 9:00 o'clock a.m., this 27th day of July, 1978.

_____ l/s
Nicholas Scalera,
J.S.C.
Judge of the Superior
Court.

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
ESSEX COUNTY

STATE OF NEW JERSEY)
)SS CRIMINAL SEARCH
COUNTY OF ESSEX) WARRANT

To Investigator Richard Childs, any officer of the New Jersey Division of Criminal Justice, any officer of the Newark Police Department or any officer of any law enforcement agency having jurisdiction.

1. This matter being opened to the Court by Richard Childs on application for the issuance of search warrants for the building complex described below and the Court having reviewed the affidavits of Richard Childs, and being satisfied therefore that probable cause of a violation of N.J.S.A. 2A:85-1 exists and that located thereon are:

(1) Sample bottles containing various chemicals. These bottles are located on the second floor of 411 Wilson Avenue and are located

> on portable shelving at that location. These sample bottles have labels affixed thereto which setforth the date on which chemicals were received, the name of the driver and perhaps the name of the individual who took the sample.

and that probable cause exists for the issuance of such warrant;

2. You are hereby commanded to search and photograph the building complex described below and to serve a copy of the warrant on such person or on the person in charge or control of such building complex;

(3) You are hereby ordered, in the event you seize any of the described articles, to give a receipt for the property so seized to the person from whom it was taken or in which possession it was found, or in the absence of such person to leave a copy of this warrant together with such receipt in or upon the said premises from which the property is taken.

4. You are authorized to execute this warrant within ten (10) days from the issuance thereof, between the hours of 7:00 a.m. and 6:00 p.m. and thereafter to forthwith make prompt return to me with a written inventory of the property seized hereunder.

5. The following is a description of the building complex to be searched:

The building complex is located at 411 Wilson Avenue in Newark, New Jersey; this complex is situated on the northerly side of Wilson Avenue subjacent to the Wilson Avenue underpass. The complex is composed of continguous buildings and are of red brick composition and are two-stories each. The complex is marked with the number 411 positioned above the second story windows on the most easterly portion of the complex. The complex has four (4) entrance doors facing Wilson

Avenue. The rear of the building complex is predominately composed of contiguous building, two stories in height and, of red brick composition toward the easterly section, is a two story aqua structure of concrete composition which protrudes northerly from the main complex but which appears to be attached to the main red brick complex heretofore described; to the west of this two-story aqua structure is a one-story garage-like structure which is also aqua in color. Located on the north of this garage-like structure is an opening the approximate size of a garage entrance way. To the west of this garage door opening is a pedestrian entrance door leading to the inside of this one-story aqua structure.

6. Given and issued under my hand at the City of Newark at 9:10 o'clock a.m.,

this 11th day of September, 1978.

_____ l/s
Nicholas Scalera
J.S.C.
Judge of the Superior
Court.

APPENDIX O

STEIN, BLIABLIAS, MCGUIRE & PANTAGES
11 Commerce Street
Newark, New Jersey 07102
(201)622-3100
Attorneys for Defendant
Leif R. Sigmond

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Plaintiff UNITED STATES OF AMERICA	) Hon. Dickinson) R. Debevoise
v.	) Criminal No.) 82-200(DRD)
Defendant	)
HERBERT G. CASE, JR. MACK BARNES, LEIF R. SIGMOND, and SCIENTIFIC CHEMICAL PROCESSING COMPANY, INC.	) MOTION TO) DISMISS) INDICTMENT, FOR) SUPPRESSION,) FOR A BILL OF) PARTICULARS AND) FOR OTHER) RELIEF

TO: HONORABLE HUNT W. DUMOND
United States Attorney for
District of New Jersey
970 Broad Street
Newark, New Jersey 07102
ATT: Charles S. Crandall
Assistant United States Attorney

SIR:

PLEASE TAKE NOTICE, that on Monday, November 1, 1982, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, the undersigned attorneys for defendants, Leif R. Sigmond, Herbert

G. Case, Jr. and Mack Barnes, shall move before the Honorable Dickinson R. Debevoise, Judge of the United States District Court for the District of New Jersey, at the United States Court House and Post Office, Trenton, New Jersey, for the following relief:

1. For an Order that the indictment be dismissed on grounds that the United States improperly indicted the defendants under 18 U.S.C. §§1341 and 1342.

2. For an Order that all evidence illegally seized by the State of New Jersey and the fruits thereof be suppressed as evidence against the defendants in these criminal proceedings and, further, that the defendants be granted a hearing thereon.

3. For an Order that Counts 4, 5, 6, 7, 9, 10, 11, 12, 13 and 14 of the indictment be dismissed on the grounds that the acts alleged in those counts are outside

the scope of 17 U.S.C. §§1341 and 1342.

4. For an Order that the United States be required to elect upon which counts of the indictment to proceed as the indictment charges duplicate mailings.

5. For an Order, pursuant to Rule 14 of the Rules of Criminal Procedure, granting the defendants a separate trial as to each of Counts 2 through 21 of the indictment or, in the alternative, requiring the United States to elect upon which counts to proceed on the grounds that the defendants will suffer prejudice from the joint trial of the offenses in said counts.

6. For an Order requiring the United States to furnish the defendants, within a time to be therein specified, a written bill of particulars as set forth in Schedule A attached hereto.

In support of this motion, the defendants will rely upon the attached brief

and exhibits submitted simultaneously herewith.

STEIN, BLIABLIAS, MCGUIRE
& PANTAGES
Attorneys for Defendant Leif
R. Sigmond

WALDER, SONDAK, BERKELEY
& BROGAN
Attorneys for Defendant
Herbert G. Case, Jr.

MINICHINO, MAUTONE &
COLASANTI
Attorneys for Defendant
Mack Barnes

By:_____l/s
DINO D. BLIABLIAS
On Behalf of All Defendants

Dated: October 15, 1982

SCHEDULE
BILL OF PARTICULARS

Defendants, Leif R. Sigmond, Herbert G. Case, Jr. and Mack Barnes, respectfully request a written bill of particulars as to the following matters alleged in the indictment herein, as follows:

1. As to each incident of unlawful dumping referred to in Paragraph 15 of Count One of the indictment, set forth the exact citation of each and every federal or state statute, regulation or other authority by which the dumping was alleged to have been made unlawful.

2. As to each incident of unlawful dumping referred to in Paragraph 15 of Count One of the indictment, state the name or chemical composition of each substance alleged to have been dumped.

3. As to each chemical substance or compound listed in bill of particular number 2 above, set forth the volume and chemical concentration of the chemical

substance or compound alleged to have been dumped.

4. As to each incident of unlawful dumping referred to in Paragraph 17 of Count One of the indictment, set forth the exact citation of each and every federal or state statute, regulation or other authority under which the dumping was alleged to have been made unlawful.

5.As to each incident of unlawful dumping referred to in Paragraph 17 of Count One of the indictment, set forth the name or chemical composition of each substance alleged to have been dumped.

6. As to each chemical substance or compound listed in bill of particular number 5 above, set forth the volume and chemical concentration of the chemical substance or compound alleged to have been dumped.

APPENDIX P

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No.
vs.	:	82-200
LEIF R. SIGMOND	:	JUDGMENT

Filed Mar.18, 1983

at 3 p.m.

Allyn Z. Lite

This cause having come on regularly for trial before the Court, with jury, and after due deliberation, the jury having returned a verdict of not guilty, on Counts 5, 6, 13, 14, 18, 19, 20 and 21, of the indictment.

It is, on this 18th day of March, 1983, ADJUDGED that the defendant is not guilty of the offense charged in the indictment, as to Counts 5, 6, 13, 14, 18, 19, 20 and 21.

_____ l/s
Dickinson R. Debevoise
United States District
Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No.
vs.	:	82-200
HERBERT G. CASE, JR.	:	JUDGMENT

Filed Mar.18, 1983
at 3 p.m.
Allyn Z. Lite

This cause having come on regularly for trial before the Court, with jury, and after due deliberation, the jury having returned a verdict of not guilty, on Counts 5, 6, 13, 14 and 18, of the indictment.

It is, on this 18th day of March, 1983, ADJUDGED that the defendant is not guilty of the offense charged in the indictment, as to Counts 5, 6, 13, 14 and 18.

l/s
Dickinson R. Debevoise
United States District
Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No.
vs.	:	82-200
MACK BARNES	:	JUDGMENT

Filed Mar.18, 1983
at 3 p.m.
Allyn Z. Lite

This cause having come on regularly for trial before the Court, with jury, and after due deliberation, the jury having returned a verdict of not guilty, on Counts 5, 6, 13, 14, 18 and 19, of the indictment.

It is, on this 18th day of March, 1983, ADJUDGED that the defendant is not guilty of the offense charged in the indictment, as to Counts 5, 6, 13, 14, 18 and 19.

_____ l/s
Dickinson R. Debevoise
United States District
Judge

APPENDIX Q

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

		Criminal No.82 200
UNITED STATES OF AMERICA	:	Transcipt of Proceedings
v.	:	TRIAL
HERBERT G. CASE, JR., MACK BARNES, LEIF R. SIGMOND and SCIENTIFIC CHEMICAL PROCESSING COMPANY, INC.,	:	Newark, NJ March 11, 1983
Defendants.	:	

BEFORE:

HON. DICKINSON R. DEBEVOISE, U.S.D.J.
and a Jury

Appearances:

W. HUNT DUMONT, UNITED STATES ATTORNEY
BY: A PATRICK NUCCIARONE, Assistant U.S. Attorney
CHARLES S. CRANDALL, Assistant U.S. Attorney
For the Government

JUSTIN P. WALDER, ESQ.
For Defendant Case

ANTHONY R. MAUTONE, ESQ.
For Defendant Barnes

DINO D. BLIABLIAS, ESQ.
For Defendant Sigmond

* * *

6 (The jury enters the courtroom).

7 THE COURT: Mr. Crandall.

8 MR. CRANDALL: Thank you, your Honor.

9 Gentlemen of the defense, ladies and gentlemen of

10 the jury.

11 We are at the point of the case where the law

12 affords the prosecution an opportunity to address you again in

13 what's known as a rebuttal.

14 * * *

* * *

6 What about the evidence produced this past Monday
7 to refut the facts that Heflich and others testified about?
8 Remember what was produced for you? It was Harry Starrett and
9 Frank Perno, for the glorious principle that if they didn't
10 know about Lone Pine, his attorney and his business
11 consultant, how in the world would these men know about Lone
12 Pine?
13 Number 1, does that principle make any sense when
14 the fact that his attorney never came on the scene until
15 almost a year after this Lone Pine dumping scheme was done and
16 the same with his business agent?

17 What kind of evidence is that that these men

18 didn't know about it?

19 I submit to you the things that Starrett, his

20 attorney--that's Heflich's attorney--testified about,

21 cleared away any smoke that may have been existing about who

22 was the crook and who was the cheat about the moneys that were

23 due and owing.

24 I sumit to you that when Mr. Starrett testified,

25 he completely undermined what the defense had been saying all

1. along, that is, that Henry Heflich was trying to cheat SCP.

2 What did the evidence show when he testified?

3 There was a $55,000 debt, that even SCP auditors said we owe

4 them, and that there was an agreement, a $10,000 check paid at

5 that meeting, and then SCP, not Heflich, SCP reneged on a debt

6 that they knew they owe.

7 Does even that limited testimony show you Heflich

8 was a crook? I submit not.

9 Does that fact alone refute the testimony of

10 various others concerning Heflich and Lone Pine and the

11 awareness, awareness of these men? Does it refute Linda Walsh

12 and the statements she relied on Herb Case and Mack Barnes to
13 tell her when Heflich's trucks were coming up, if he didn't
14 call himself? Otherwise there would be no manifest.
15 Well, it's a great scheme. Why should the girls
16 in the office know about Lone Pine? Keep them in the dark.
17 We just won't tell them Heflich's trucks are coming and there
18 will be no manifest for Lone Pine.
19 You don't have to involve the office girls. It's
20 a big secret. A secret of these men, I submit to you, ladies
21 and gentlemen, is what it is.
22 Does it refute--does that testimony you heard

23 Monday refute George Borden who said
he didn't remember
24 exactly, couldn't say who Herb Case
was, but he remembers
25 being introduced to a fella named Case
at the Lone Pine

1 Landfill?

2 Does it refute George Smajda's testimony? Does

3 it refute the entries in Mr. Case's diary about Lone Pine?

4 This? Read that diary, ladies and gentlemen, particularly, I

5 ask you, where it says "Change of inspect at LP." What does

6 that stand for, do you think? Lollipop?

7 The fact that you have a fire on June 26, 1978,

8 mentioned in the diary, George is mentioned, drums floating in

9 pool, Carter Wallace. Does that ring any bells?

10 Yes, it does, I submit, ladies and gentlemen. It

11 shows that Herb Case knew perfectly well where those materials

12 that Heflich was taking were going, to the Lone Pine Landfill.

* * *

APPENDIX R

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WALDER, SONDAK, BERKELEY & BROGAN
A Professional Corporation
Counsellors at Law
17 Academy Street
Newark, New Jersey 07102
(201)624-2155
Attorneys for Defendant

(Hon. Dickinson R. Debevoise)

Criminal No.82 200

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	AFFIDAVIT IN
v.	:	SUPPORT OF
	:	MOTION FOR NEW
HERBERT G. CASE, JR.,	:	TRIAL PURSUANT
MACK BARNES, LEIF R.	:	TO FED.R.CRIM.
SIGMOND and SCIENTIFIC	:	PRO. 33
CHEMICAL PROCESSING	:	
COMPANY, INC.,	:	
	:	
Defendants.	:	

JUSTIN P. WALDER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am a member of the firm of Walder, Sondak, Berkeley & Brogan, P.A., attorneys for defendant Herbert G. Case, and I am fully familiar with the above-captioned matter as well as the facts stated herein.

2. Following the verdict in this case on March 16, 1983, I proceeded onto the elevator to leave the building. As I entered the elevator, I noted the presence of several juror who had served on the case.

3. When I exited the elevator at the Post Office level, a group of jurors were there and were joined by some of those who had been on the elevator with me.

4. One of the jurors, Natalie Regan (No. 5), stated that she had a question and then inquired with regard to why the defendants had not taken the stand and why the case had been brought to such an abrupt halt.

5. A number of other jurors reiterated the question posed by Regan and state that they had discussed the defendant's failure to testify during their deliberations in this case. In addition to Regan, the statements were

made by Margaret Murphy (No. 6) and Joan Nolan (No.11). Others in the group who expressed agreement with the statements of Regan, Murphy and Nolan included Geraldine Sudol (No. 2) and Arlene Williams (No. 4). Also present were James Masanto (No. 10) and Dorothy Ayrer (No. 8).

6. The jurors' statements clearly indicated that they had considered the failure of defendants to testify and to present further evidence. They further indicated that the failure of defendants to take the stand had effected their deliberations and verdict in a manner adverse to defendants. One juror stated that they would have been happy to stay longer in order to hear the defendants.

7. I reported this incident to Judge Debevoise, who had presided over the trial, at 3:50 p.m. that afternoon, and to Assistant United States Attorney Patrick Nucciarone, at approximately 4:00 p.m.

_____l/s
JUSTIN P. WALDER

Sworn to and subscribed
before me this 29th day
of March, 1983.

_____/ls

APPENDIX S

SUBPOENA TO TESTIFY BEFORE GRAND JURY

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY

To: Any Responsible Officer or Custodian
of Records
SCIENTIFIC CHEMICAL PROCESSING CORP.

You are hereby commanded to appear in the United States District Court for the District of New Jersey at U.S.P.O. & Courthouse Building, Fourth Floor-Room 481 in the city of Newark on the 10th day of July, 1981 at 10:00 o'clock a.m. to testify before the Grand Jury and bring with you (See attached Schedule A).

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

This subpoena is issued on application of the United States of America.

WILLIAM W. ROBERTSON
UNITED STATES ATTORNEY
BY: JAMES A. PLAISTED
Assistant U.S. Attorney
970 Broad St., Newark, NJ 07102
(201) 645-6427/8

Dated: June 25, 1981 _____

Angelo W. Locascio
Clerk

RETURN

Received this subpoena at on
and on at
I served it on the with named
by delivering a copy to and
tendering to the fee for one

day's attendance and the mileage allowed by law.

Dated:---

Service Fees: --

Travel: --

Total: --

SCHEDULE A

All records and documents of Scientific Chemical Processing Corp. related to the transportation of, treatment of, removal of, or disposal of chemicals, chemical wastes, hazardous materials, toxic materials, industrial wastes, and other waste products, handled, treated, transported or disposed of by Scientific Chemical Processing Corp. including but not limited to:

1. Accounts receivable

2. Accounts payable

3. General Ledgers

4. Customer Lists

5. Purchase orders

6. Letters and correspondence

7. Shipping orders

8. Bills of lading

9. Bank passbooks

10. Cancelled checks

11. Bank statements

12. Deposit slips, withdrawal slips and other bank records

13. Cables and telegrams

14. Internal notes and memoranda

15. Customer files

16. New Jersey Department of Environmental Protection Records including manifests, licenses, and permits

17. Loan agreements

18. Telephone toll records

19. Employee payroll records

20. Federal and state income tax returns

21. Shipping documents

22. Records of internal business meetings, phone calls, discussions and conferences

23. Waste disposal records

24. Lease arrangements

25. Sales journals

26. Cash disbursement journals

27. Cash receipts journals

28. Subsidiary journals and ledgers

29. Worksheets and ledgers used in preparation of financial statements and/or income tax returns

30. Mortgages

31. Records of penalties paid

32. Audit reports

33. Corporate resolutions and/or business statements

34. Records relating to chemical waste

shipment and storage

35. Any other records, books, ledgers, documents, correspondence or papers

for the period between January 1, 1975 to and including the present date.